

1 LETITIA JAMES
Attorney General of the State of New York
2 BARBARA D. UNDERWOOD
Solicitor General
3 ESTER MURDUKHAYEVA
Deputy Solicitor General
4 KWAME N. AKOSAH
BLAIR J. GREENWALD (admitted pro hac vice)
5 Assistant Solicitors General
28 Liberty Street
6 New York, NY 10005
7 Telephone: (212) 416-6102
Facsimile: (212) 416-8962
8 E-mail: blair.greenwald@ag.ny.gov

9 Attorneys for Amici Curiae States of New York et al.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION
13

14 TIKTOK INC.,

15 Plaintiff,

16 v.

17 ROB BONTA, in his official capacity as
18 Attorney General of California,

19 Defendant.
20
21
22
23
24

No. 5:25-cv-09789-EJD

**BRIEF FOR THE STATES OF NEW YORK,
ARIZONA, COLORADO, CONNECTICUT,
DELAWARE, HAWAI'I, IDAHO, ILLINOIS,
MAINE, MARYLAND, MASSACHUSETTS,
MICHIGAN, MINNESOTA, NEVADA, NEW
HAMPSHIRE, NEW JERSEY, NEW
MEXICO, NORTH CAROLINA, OREGON,
RHODE ISLAND, UTAH, VERMONT,
VIRGINIA, WASHINGTON, AND
WISCONSIN, AND THE DISTRICT OF
COLUMBIA AS AMICI CURIAE IN
SUPPORT OF DEFENDANT**

Hearing Date/Time: May 7, 2026, at 9 a.m.
Place: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

25 *(Additional captions on next page.)*
26
27
28

META PLATFORMS, INC.,

Plaintiff,

v.

ROB BONTA, in his official capacity as
Attorney General of California,

Defendant.

No. 5:25-cv-09792-EJD

Hearing Date/Time: May 7, 2026, at 9 a.m.
Place: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

GOOGLE LLC and YOUTUBE LLC,

Plaintiffs,

v.

ROB BONTA, in his official capacity as
Attorney General of California,

Defendant.

No. 5:25-cv-09795-EJD

Hearing Date/Time: May 7, 2026, at 9 a.m.
Place: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION AND INTEREST OF AMICI CURIAE	1
ARGUMENT	3
I. States Have Taken Many Steps to Protect Minors from Mental Health Harms Caused by Social Media.....	3
II. Plaintiffs Cannot Show That S.B. 976 Restricts Their Protected Expression	11
CONCLUSION.....	18

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Developmental Servs. Network v. Douglas</i> , 666 F.3d 540 (9th Cir. 2011)	11
<i>Members of City Council of City of L.A. v. Taxpayers for Vincent</i> , 466 U.S. 789 (1984)	13
<i>Moody v. NetChoice, LLC</i> , 603 U.S. 707 (2024)	2, 11, 15-16
<i>NetChoice, LLC v. Bonta</i> , 152 F.4th 1002 (9th Cir. 2025)	2, 11, 16-17
<i>Reed v. Town of Gilbert</i> , 576 U.S. 155 (2015)	11-12
<i>Smith v. Helzer</i> , 95 F.4th 1207 (9th Cir. 2024)	11
Statutes	
Cal. Health & Safety Code § 27000.5	12-13
Del. Code Ann. tit. 6, § 1204C	8
Minn. Stat. Ann. § 325M.33	7
N.Y. Gen. Bus. Law §§ 899-ee through 899-mm	8
§ 1501	7
Or. Rev. Stat. Ann. § 646A.578	8
Tex. Bus. & Com. Code Ann. §§ 509.001-509.002	8
§§ 509.051-509.052	8
Utah Code Ann. § 13-71-201	7
§ 13-71-203	7

Statutes	Page(s)
Vt. Stat. Ann.	
tit. 9, § 2449a	7-8
tit. 9, § 2449c	7
tit. 9, § 2449d	8
tit. 9, § 2449f.....	8
Miscellaneous Authorities	
Amy Orben et al., <i>Windows of Developmental Sensitivity to Social Media</i> , 13 Nature Commc'ns (Mar. 28, 2022).....	5
Arvind Narayanan, Knight First Amend. Inst. Colum. U., <i>Understanding Social Media Recommendation Algorithms</i> (2023)	4, 12
Barbara Ortutay, <i>States Sue Meta Claiming Its Social Platforms Are Addictive and Harm Children's Mental Health</i> , Associated Press News (updated Oct. 24, 2023)	9
Cole Stryker et al., IBM, <i>The 2026 Guide to Machine Learning</i> (n.d.).....	4
Econ. Just. Div., Off. of N.Y. State Att'y Gen. Letitia James, <i>Stop Addictive Feeds Exploitation (SAFE) for Kids Act: Notice of Proposed Rulemaking</i> (Sept. 15, 2025)	7
Emily A. Vogels, Risa Gelles-Watnick & Navid Massarat, Pew Rsch. Ctr., <i>Teens, Social Media and Technology 2022</i> (Aug. 10, 2022)	3
Grace Holland & Marika Tiggemann, <i>A Systematic Review of the Impact of the Use of Social Networking Sites on Body Image and Disordered Eating Outcomes</i> , 17 Body Image 100 (2016)	6
Haleluyah Hadero, <i>States Sue TikTok, Saying the App Is Addictive and Harms the Mental Health of Children</i> , PBS News (Oct. 8, 2024).....	10
Health & Med. Div., Nat'l Acads. Scis., Eng'g & Med., <i>Social Media and Adolescent Health</i> (Sandro Galea, Gillian J. Buckley & Alexis Wojtowicz eds. 2024).....	5
Holly Scott, Stephany M. Biello & Heather Cleland Woods, <i>Social Media Use and Adolescent Sleep Patterns: Cross-Sectional Findings from the UK Millennium Cohort Study</i> , 9 BMJ Open 1 (2019).....	6
Kira E. Riehm et al., <i>Associations Between Time Spent Using Social Media and Internalizing and Externalizing Problems Among US Youth</i> , 76 JAMA Psychiatry 1266 (2019)	6
Letter from NAAG to Hon. John Thune, Senate Majority Leader et al. (Feb. 10, 2026).....	9

Miscellaneous Authorities

Page(s)

Letter from NAAG to Hon. Mike Johnson, Speaker of the House, Hon. Chuck Schumer, Senate Majority Leader & Hon. Mitch McConnell, Senate Minority Leader (Sept. 9, 2024).....	9
Letter from NAAG to Mark Zuckerberg, CEO, Facebook, Inc. (May 10, 2021).....	8
Letter from NAAG to Matthew Penarczyk, Head of Legal, Americas, TikTok, Inc. & Michael O'Sullivan, Gen. Couns., Snapchat (Mar. 28, 2022).....	9
Letter from Nat'l Assoc. of Att'ys Gen. (NAAG) to U.S. Senate Comm. on Com., Sci. & Transp. (Oct. 4, 2021)	8
Luca Braghieri, Ro'ee Levy & Alexey Makarin, <i>Social Media and Mental Health</i> , 112 Am. Econ. Rev. 3660 (2022)	6
Mackenzie Austin & Max Levy, <i>Speech Certainty: Algorithmic Speech and the Limits of the First Amendment</i> , 77 Stan. L. Rev. 1 (2025)	17
Maria T. Maza et al., <i>Association of Habitual Checking Behaviors on Social Media with Longitudinal Functional Brain Development</i> , 177 JAMA Pediatrics 160 (2023)	5
Melissa G. Hunt et al., U. Pa., <i>No More FOMO: Limiting Social Media Decreases Loneliness and Depression</i> , 37 J. of Soc. & Clinical Psych. 751 (2018)	6
Meta, <i>Instagram Feed Recommendations AI System</i> (updated Sept. 4, 2025)	16
Natasha Singer, <i>At Meta, Millions of Underage Users Were an 'Open Secret,' States Say</i> , N.Y. Times (Nov. 25, 2023)	3
Off. of the N.Y. State Att'y Gen., Press Release, Attorney General James Sues TikTok for Harming Children's Mental Health (Oct. 8, 2024).....	10
Qing Huang, Mingxin Hu & Hongliang Chen et al., <i>Exploring Stress and Problematic Use of Short-Form Video Applications Among Middle-Aged Chinese Adults: The Mediating Roles of Duration of Use and Flow Experience</i> , 19 Int'l J. Env't Rsch. & Pub. Health, no. 1, art. no. 132, 2022	4
U.S. Surgeon Gen., Advisory, <i>Social Media and Youth Mental Health</i> (2023)	3-5
Victoria Rideout et al., Common Sense, <i>The Common Sense Census: Media Use by Tweens and Teens, 2021</i> (2022).....	3
W. Nicholson Price II & Arti K. Rai, <i>Clearing Opacity Through Machine Learning</i> , 106 Iowa L. Rev. 775 (2021)	17

Miscellaneous Authorities

Page(s)

- Yao Qin, Alessandro Musetti & Bahiyah Omar, *Flow Experience Is a Key Factor in the Likelihood of Adolescents' Problematic TikTok Use: The Moderating Role of Active Parental Mediation*, 20 Int'l J. Env't Rsch. & Pub. Health, no. 3, art. no. 2089, 2023.....4
- Yvonne Kelly et al., *Social Media Use and Adolescent Mental Health: Findings from the UK Millennium Cohort Study*, 6 eClinicalMedicine 59 (2018)6

INTRODUCTION AND INTEREST OF AMICI CURIAE

Amici curiae are the States of New York, Arizona, Colorado, Connecticut, Delaware, Hawai‘i, Idaho, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Utah, Vermont, Virginia, Washington, and Wisconsin, and the District of Columbia. Amici submit this brief in support of defendant Attorney General of California’s opposition to three preliminary injunction motions brought by (i) Google LLC and YouTube, LLC (together, “Google”); (ii) TikTok Inc.; and (iii) Meta Platforms, Inc.¹ The plaintiffs seek to preliminarily enjoin enforcement of California’s Protecting Our Kids from Social Media Addiction Act (S.B. 976, 2024 Senate (Cal. 2024)), which protects minors from social media addiction and associated mental health harms by limiting social media platforms’ use of data about minors to develop algorithms that lead to the addictive use of social media.

Amici have a strong interest in supporting the enforceability of the challenged statute. As explained in more detail below, many amici have enacted laws to address the youth mental health crisis caused by minors’ excessive use of social media. Amici have also enacted many other laws aimed at protecting minors online, including protections for data privacy. Finally, a broad range of States, including many amici, have initiated litigation against social media platforms for practices that are harmful to children. For example, the States of New York, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawai‘i, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana,

¹ See Google LLC’s & YouTube, LLC’s Notice of Mot. & Mot. for Prelim. Inj., *Google LLC & YouTube, LLC v. Rob Bonta*, No. 5:25-cv-9795 (Nov. 18, 2025), ECF No. 23 (“Google Mot.”); Pl.’s Notice of Mot. & Mot. for Prelim. Inj., *TikTok Inc. v. Rob Bonta*, 5:25-cv-9789 (Nov. 18, 2025), ECF No. 20 (“TikTok Mot.”); Pl. Meta Platforms, Inc.’s Notice of Mot. & Mot. for Prelim. Inj., *Meta Platforms, Inc. v. Rob Bonta*, No. 5:25-cv-9792 (Nov. 18, 2025), ECF No. 19 (“Meta Mot.”).

1 Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Nevada, North
2 Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South
3 Dakota, Virginia, Washington, West Virginia, and Wisconsin have sued Meta for designing and
4 implementing addictive features that harm minors and collecting data on users under thirteen
5 without obtaining parental consent. Similarly, the States of New York, California, Illinois,
6 Kentucky, Louisiana, Massachusetts, Mississippi, New Hampshire, New Jersey, Nevada, North
7 Carolina, Oregon, South Carolina, Vermont, and Washington, and the District of Columbia have
8 sued TikTok based on the platform’s use of addictive features that have led to poor mental health
9 outcomes for minors.

10 Amici agree with California that plaintiffs are not likely to succeed on the merits of their
11 as-applied First Amendment challenges for many different reasons. In this brief, amici write to
12 emphasize that the addictive feed provisions challenged in this case merely regulate algorithmic
13 processes that “‘respond[] solely to how [plaintiffs’] users act online’” and therefore “‘probably
14 [are] not expressive.’” *NetChoice, LLC v. Bonta*, 152 F.4th 1002, 1014 (9th Cir. 2025) (quoting
15 *Moody v. NetChoice, LLC*, 603 U.S. 707, 736 n.5 (2024)). Plaintiffs have not provided a sufficient
16 record establishing that the algorithmic processes regulated by S.B. 976 “implement [a] human
17 being[’s] inherently expressive choice.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 745-46 (2024)
18 (Barrett, J., concurring). Instead, the current record reveals that such processes are the product of
19 nonexpressive machine learning or artificial intelligence systems that recommend content
20 independent of human editorial judgment. No court has concluded that such systems are entitled to
21 First Amendment protection, and the Supreme Court and the Ninth Circuit have cautioned against
22 reaching such a conclusion absent compelling evidence. *See id.* at 745-46 (Barrett, J., concurring);
23 *id.* at 771 (Alito, J., concurring, joined by Thomas & Gorsuch, JJ.); *NetChoice*, 152 F.4th at 1021
24 n.6.

ARGUMENT

I. States Have Taken Many Steps to Protect Minors from Mental Health Harms Caused by Social Media

The use of social media presents a well-documented and profound risk to minors' mental health and overall well-being.² Minors spend a substantial amount of time on social media. Ninety-five percent of minors ages thirteen to seventeen use social media, with more than a third reporting that they use it "almost constantly."³ Fifty-four percent of users in this age group say that it would be hard to stop using social media.⁴ And for even younger children ages eight to twelve, nearly forty percent have used social media, and nearly twenty percent use it daily,⁵ which is itself a staggering statistic considering that the largest social media applications have terms and conditions that supposedly prohibit children under age thirteen from having accounts.⁶

In recent years, social media companies have adopted sophisticated machine learning algorithms that have made social media even more addictive for minors.⁷ These algorithms vary

² See U.S. Surgeon Gen., Advisory, *Social Media and Youth Mental Health* 4, 6-10, 13 (2023).

³ See Emily A. Vogels, Risa Gelles-Watnick & Navid Massarat, Pew Rsch. Ctr., *Teens, Social Media and Technology 2022* (Aug. 10, 2022) (quotation marks omitted).

⁴ See *id.*

⁵ See Victoria Rideout et al., Common Sense, *The Common Sense Census: Media Use by Tweens and Teens, 2021* 5 (2022).

⁶ See Natasha Singer, *At Meta, Millions of Underage Users Were an 'Open Secret,' States Say*, N.Y. Times (Nov. 25, 2023).

⁷ "Machine learning (ML) is the subset of artificial intelligence (AI) focused on algorithms that can 'learn' the patterns of training data and, subsequently, make accurate inferences about new

1 by platform, but all leverage user data to create an often endless feed of online media that is tailor-
2 made for each user.⁸ By leveraging massive amounts of data on how users behave on the platform,
3 these automated algorithmic processes create a feed of media designed to trigger the brain’s “reward
4 center” with an intense sense of pleasure and satisfaction in any given user.⁹ These algorithmic
5 processes also reduce user effort to keep the user engaged with the feed as much as possible,
6 creating a mental “flow experience” that makes users more likely to lose track of time,¹⁰ and
7 inducing users to stay on the platform as long as possible at the expense of all other
8 considerations.¹¹ Minors are particularly susceptible to these addictive patterns because an

11 _____
12 data. This pattern recognition ability enables machine learning models to make decisions or predic-
13 tions without explicit, hard-coded instructions.” Cole Stryker et al., IBM, *The 2026 Guide to*
14 *Machine Learning* (n.d.).

15 ⁸ See Arvind Narayanan, Knight First Amend. Inst. Colum. U., *Understanding Social*
16 *Media Recommendation Algorithms* 18-22 (2023).

17 ⁹ See *id.*; U.S. Surgeon Gen., *supra*, at 9.

18 ¹⁰ See Yao Qin, Alessandro Musetti & Bahiyah Omar, *Flow Experience Is a Key Factor*
19 *in the Likelihood of Adolescents’ Problematic TikTok Use: The Moderating Role of Active*
20 *Parental Mediation*, 20 Int’l J. Env’t Rsch. & Pub. Health, no. 3, art. no. 2089, 2023, at 1, 14.

21 ¹¹ See Qing Huang, Mingxin Hu & Hongliang Chen et al., *Exploring Stress and*
22 *Problematic Use of Short-Form Video Applications Among Middle-Aged Chinese Adults: The*
23 *Mediating Roles of Duration of Use and Flow Experience*, 19 Int’l J. Env’t Rsch. & Pub. Health,
24 no. 1, art. no. 132, 2022, at 3-4, 10-11; Qin, Musetti & Omar, *supra*, at 3 (“[S]ocial media satisfy
25 users’ psychological needs through an intrinsic reward mechanism. When users perceive benefits,
26
27

individual's brain is still developing an ability to regulate time management, attention, and impulse control well into their early twenties.¹²

The more time minors spend on social media, the more likely they will experience a decrease in life satisfaction, with the most significant effects demonstrated in preteenagers and young teenagers.¹³ According to one study, twelve- to fifteen-year-olds who spent more than three hours per day using social media significantly increased their risk of poor mental health outcomes,

they might continue to be immersed in the process of using, which creates a closed loop of pleasure and eventually leads to problematic online behaviors.”).

¹² See U.S. Surgeon Gen., *supra*, at 5 (“Frequent social media use may be associated with distinct changes in the developing brain in the amygdala (important for emotional learning and behavior) and the prefrontal cortex (important for impulse control, emotional regulation, and moderating social behavior), and could increase sensitivity to social rewards and punishments.”); see also Maria T. Maza et al., *Association of Habitual Checking Behaviors on Social Media with Longitudinal Functional Brain Development*, 177 JAMA Pediatrics 160 (2023); see also Health & Med. Div., Nat’l Acads. Scis., Eng’g & Med., *Social Media and Adolescent Health* 51 (Sandro Galea, Gillian J. Buckley & Alexis Wojtowicz eds. 2024) (“As children approach adolescence, their brains reach adult size, but they continue neurobiological maturation during the teen years into the mid to late twenties.”).

¹³ Amy Orben et al., *Windows of Developmental Sensitivity to Social Media*, 13 Nature Commc’ns, at 5 (Mar. 28, 2022).

1 including symptoms of depression and anxiety.¹⁴ A separate analysis of college-aged users showed
2 that the introduction of a major social media platform caused a nine percent increase in depression
3 and a twelve percent increase in anxiety over baseline.¹⁵

4 Conversely, studies have shown that a reduction in the use of social media can improve
5 mental health. For example, reducing social media use to ten minutes per day had a significant
6 positive impact on well-being, decreasing symptoms of loneliness and depression.¹⁶ Extensive use
7 of social media is also correlated with unhealthy behaviors and negative outcomes in minors,
8 including unhealthy sleep patterns, online harassment, low self-esteem, disordered eating, and poor
9 body image.¹⁷

12
13 ¹⁴ See Kira E. Riehm et al., Associations Between Time Spent Using Social Media and
14 Internalizing and Externalizing Problems Among US Youth, 76 JAMA Psychiatry 1266 (2019).

15 ¹⁵ See Luca Braghieri, Ro'ee Levy & Alexey Makarin, Social Media and Mental Health,
16 112 Am. Econ. Rev. 3660, 3674-75 (2022).

17 ¹⁶ Melissa G. Hunt et al., U. Pa., No More FOMO: Limiting Social Media Decreases
18 Loneliness and Depression, 37 J. of Soc. & Clinical Psych. 751, 763 (2018); see also Braghieri,
19 Levy & Makarin, *supra*, at 3663.

20
21 ¹⁷ See Grace Holland & Marika Tiggemann, A Systematic Review of the Impact of the Use
22 of Social Networking Sites on Body Image and Disordered Eating Outcomes, 17 Body Image 100,
23 108 (2016); Holly Scott, Stephany M. Biello & Heather Cleland Woods, Social Media Use and
24 Adolescent Sleep Patterns: Cross-Sectional Findings from the UK Millennium Cohort Study, 9 BMJ
25 Open 1, 4-7 (2019); Yvonne Kelly et al., Social Media Use and Adolescent Mental Health: Findings
26 from the UK Millennium Cohort Study, 6 eClinicalMedicine 59 (2018).

1 In recent years, States—including many amici—have enacted bills to address the harms
2 caused by minors’ excessive social media use. For example, the State of New York enacted the
3 Stop Addictive Feeds Exploitation for Kids Act, a law that requires social media platforms to
4 determine whether a user is a minor or an adult and, like S.B. 976, requires the platforms to obtain
5 parental consent before allowing a minor user to access addictive social media features.¹⁸ Similarly,
6 the State of Utah enacted a law requiring social media platforms to implement an age assurance
7 system and provide safeguards that limit the amount of time minors spend on the platform. Utah
8 Code Ann. §§ 13-71-201, 13-71-203. And the State of Minnesota enacted a law requiring social
9 media platforms to report on how they limit “excessive” social media use, including details about
10 how the platforms’ practices impact “time spent on the platform.”¹⁹ Minn. Stat. Ann. § 325M.33(1),
11 (3).

12
13 States have also enacted laws restricting social media platforms’ collection of minor users’
14 data. For instance, the State of Vermont enacted a law that restricts covered businesses (including
15 social media platforms) from collecting or sharing minors’ personal data, and requires covered
16

17
18 ¹⁸ N.Y. Gen. Bus. Law § 1501(1). New York’s law will take effect after the New York State
19 Attorney General develops and promulgates implementing regulations—a process that is currently
20 ongoing. Econ. Just. Div., Off. of N.Y. State Att’y Gen. Letitia James, *Stop Addictive Feeds Exploita-*
21 *tion (SAFE) for Kids Act: Notice of Proposed Rulemaking* (Sept. 15, 2025).

22
23 ¹⁹ The State of Vermont also enacted a law that prohibits covered businesses, including
24 social media platforms, from deploying design features that could cause foreseeable harm to
25 minors, including emotional distress and addictive use. *See* Vt. Stat. Ann. tit. 9, §§ 2449a(10), (27),
26 2449c.

1 businesses to have the default privacy setting for their digital products set to the highest level of
2 privacy when used by a minor. *See* Vt. Stat. Ann. tit. 9, §§ 2449a(10), (27), 2449d(a), 2449f(a)(1)-
3 (2). The States of Delaware and Oregon enacted laws prohibiting the use of minors’ personal
4 information for targeted advertising. *See* Del. Code Ann. tit. 6, § 1204C; Or. Rev. Stat. Ann.
5 § 646A.578(2)(c). The State of Texas enacted the Securing Children Online Through Parental
6 Empowerment Act, which requires social media platforms to “register” the age of their users and
7 obtain parental consent before collecting data on minor users. *See* Tex. Bus. & Com. Code Ann.
8 §§ 509.001-509.002, 509.051-509.052. And the State of New York enacted a law that requires
9 operators of online services, including social media platforms, to obtain informed parental consent
10 before collecting data of minors under thirteen. *See* N.Y. Gen. Bus. Law §§ 899-ee through 899-mm.

12 In addition, States have engaged in advocacy efforts to protect minors from harms caused
13 by social media. For example, in 2021, forty-eight States, three territories, and the District of
14 Columbia expressed support for the U.S. Senate’s investigation of the impact of Facebook’s and
15 Instagram’s algorithms on minors’ mental health.²⁰ That same year, forty States, three territories,
16 and the District of Columbia urged Meta to abandon its plans to launch a version of Instagram for
17 children under thirteen.²¹ The following year, forty-three States and territories sent a letter to
18 TikTok and Snapchat urging them to make their platforms compatible with widely used parental
19

24 ²⁰ [Letter from Nat’l Assoc. of Att’ys Gen. \(NAAG\) to U.S. Senate Comm. on Com., Sci. &](#)
25 [Transp.](#) (Oct. 4, 2021).³

26 ²¹ [Letter from NAAG to Mark Zuckerberg, CEO, Facebook, Inc.](#) (May 10, 2021).

1 control mechanisms and to implement stronger parental controls on their platforms.²² In 2024,
2 forty-two States and territories wrote a letter to the U.S. Congress expressing support for a federal
3 law requiring a surgeon general’s warning on algorithm-driven social media platforms to better
4 protect minors’ mental health.²³ And in 2026, forty States and territories wrote a letter to federal
5 congressional leaders expressing support for the Senate version of the Kids Online Safety Act, S.
6 1748, which recognizes broad harms to minors caused by social media platforms and preserves
7 States’ authority to protect minors from such harms.²⁴

8
9 States have also pursued enforcement actions to protect minors from these harms. In 2023,
10 a bipartisan coalition of thirty-three States filed a federal lawsuit against Meta, the owner of the
11 Facebook and Instagram platforms. The States allege that Meta knowingly designed and deployed
12 features harmful to young users on those platforms, and routinely collected data on users under
13 thirteen without obtaining parental consent.²⁵ Nine States filed similar individual lawsuits against
14 Meta in their respective state courts.²⁶ And in October 2024, a bipartisan coalition of thirteen States
15
16

17 ²² [Letter from NAAG to Matthew Penarczyk, Head of Legal, Americas, TikTok, Inc. &](#)
18 [Michael O’Sullivan, Gen. Couns., Snapchat](#) (Mar. 28, 2022).

19
20 ²³ [Letter from NAAG to Hon. Mike Johnson, Speaker of the House, Hon. Chuck Schumer,](#)
21 [Senate Majority Leader & Hon. Mitch McConnell, Senate Minority Leader](#) (Sept. 9, 2024).

22 ²⁴ [Letter from NAAG to Hon. John Thune, Senate Majority Leader et al.](#) (Feb. 10, 2026).

23 ²⁵ Compl., *Arizona v. Meta Platforms, Inc.*, No. 4:23-cv-05448 (N.D. Cal. Oct. 24, 2023),
24 [ECF No. 1](#).

25 ²⁶ Barbara Ortutay, [States Sue Meta Claiming Its Social Platforms Are Addictive and Harm](#)
26 [Children’s Mental Health](#), Associated Press News (updated Oct. 24, 2023).

1 and the District of Columbia filed separate state-court lawsuits against TikTok alleging that the
2 platform’s addictive features lead to poor mental health outcomes for minors and that TikTok has
3 misrepresented the effectiveness of its measures used to prevent these negative mental health
4 outcomes.²⁷ Several other States, including Nevada and New Hampshire, have filed similar
5 individual lawsuits against TikTok in their respective state courts.²⁸ All of these lawsuits are
6 ongoing.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

23 ²⁷ Off. of the N.Y. State Att’y Gen., Press Release, [Attorney General James Sues TikTok](#)
24 [for Harming Children’s Mental Health](#) (Oct. 8, 2024).

25 ²⁸ See [Haleluyah Hadero, States Sue TikTok, Saying the App Is Addictive and Harms the](#)
26 [Mental Health of Children](#), PBS News (Oct. 8, 2024).
27

II. Plaintiffs Cannot Show That S.B. 976 Restricts Their Protected Expression

Plaintiffs have brought as-applied First Amendment challenges and moved to preliminarily enjoin enforcement of various provisions of S.B. 976, including the requirement that social media platforms obtain parental consent before providing a known minor with an “addictive feed.” *See* Google Mot. at 7-21; Meta Mot. at 7-25; TikTok Mot. at 12-24. The Court should deny these motions to enjoin enforcement of S.B. 976’s addictive feed provisions for the many different reasons addressed in California’s opposition brief. Amici write separately to emphasize that plaintiffs are not likely to succeed on their claims because they have failed to show that S.B. 976’s addictive feed requirements restrict social media platforms’ expressive conduct. *See Developmental Servs. Network v. Douglas*, 666 F.3d 540, 544 (9th Cir. 2011) (“[I]f a plaintiff fails to show that he has some chance on the merits, that ends the matter.”).

A predicate to any First Amendment claim is a showing that the challenged state action regulates speech or expressive conduct. *See Smith v. Helzer*, 95 F.4th 1207, 1214 (9th Cir. 2024). To prevail on their as-applied First Amendment challenges, plaintiffs would therefore need to show that their algorithms “implement[] human editorial directions” by, for example, “promot[ing] a platform’s own message to users.” *NetChoice*, 152 F.4th at 1014. But plaintiffs’ algorithms “probably [are] not expressive” if the evidence shows that the algorithms are merely “reflect[ing] users’ revealed preferences” by “respond[ing] solely to how [their] users act online” and “giving [users] the content they appear to want.” *Id.* (quoting *Moody*, 603 U.S. at 736 n.5); *accord Moody*, 603 U.S. at 746 (Barrett, J., concurring).

Plaintiffs are not likely to succeed on the merits of their First Amendment claims because S.B. 976’s addictive feed requirements regulate algorithms that respond solely to how users act online. *See NetChoice*, 152 F.4th at 1014. The statute’s addictive feed requirements do not regulate the “message[s]” or “ideas” expressed on plaintiffs’ social media platforms. *Reed v. Town of*

1 *Gilbert*, 576 U.S. 155, 163 (2015) (quotation marks omitted). Instead, the statutory requirements
2 apply only when an internet website, service, or application places “media”—of any kind—in a
3 user’s feed “based, in whole or in part, on information provided by [that] user, or otherwise
4 associated with [that] user.” Cal. Health & Safety Code § 27000.5(a); *see id.* § 27000.5(b)(1). By
5 focusing on how online platforms use these automated processes, the statutory requirements work
6 to limit only how such platforms leverage minor users’ “[b]ehavioral data” to create “engagement
7 optimization” algorithms that lead to the addictive behavioral patterns that harm children.²⁹ S.B. 976
8 provides these protections for minors while at the same time ensuring that no users lose access to
9 any media that they would otherwise be able to access on the social media platform. For example,
10 platforms can recommend any media that is responsive to a user’s affirmative conduct, either
11 because the user “expressly and unambiguously requested” that media be prioritized or depriori-
12 tized, Cal. Health & Safety Code § 27000.5(a)(4), or because the media is responsive to a user’s
13 search request, *id.* § 27000.5(a)(2).
14

15
16 Meanwhile, S.B. 976 expressly preserves plaintiffs’ ability to exercise their editorial
17 judgment about “what kinds of user-generated content may be appropriate” for their younger users.
18 *Contra* Meta Mot. at 14-15. Contrary to plaintiffs’ contention, the law does not restrict their ability
19 to issue and implement content moderation policies that seek to “prevent harmful content from
20 spreading on [the] platform.” *See* Google Mot. at 5. Nor does the law prevent plaintiffs from
21 recommending content based on the user’s status as a minor. *See* Cal. Health & Safety Code
22 § 27000.5(a)(3).
23
24
25

26
27 ²⁹ *See* Narayanan, *supra*, at 35; *see supra* at 3-6.

1 While plaintiffs claim that the addictive feed restrictions go beyond restricting algorithms
2 that respond solely to how users act online, the evidence they provide describes conduct that is not
3 regulated by S.B. 976. For example, plaintiffs claim that their social media feeds rely on policies
4 or processes that promote high quality content on their platforms and remove content that plaintiffs
5 believe will be harmful to their users. *See* Google Mot. at 5-6; Meta Mot. at 5-7, 14-15; TikTok
6 Mot. at 5-6. But nothing in S.B. 976 prohibits content moderation or any other practice of removal
7 or prioritization of content based on what a platform believes about a piece of content's quality or
8 subject matter. Plaintiffs similarly claim that they filter out content that they deem to be inappro-
9 priate for minors (Google Mot. at 6-7; Meta Mot. at 6-8), but S.B. 976 permits this activity by
10 expressly preserving plaintiffs' ability to curate media based on a user's status as a minor, *see* Cal.
11 Health & Safety Code § 27000.5(a)(3). Plaintiffs also assert that S.B. 976 will prevent them from
12 responding to a user's request to remove or deprioritize media in a feed (*see* Google Mot. at 11-
13 12; Meta Mot. at 14-15; TikTok Mot. at 15), but this assertion ignores S.B. 976's provisions
14 permitting prioritization or deprioritization of media based on a user's request or in response to a
15 user's search request, *see* Cal. Health & Safety Code § 27000.5(a)(2), (4).

18 Plaintiffs further argue that every algorithmic process used to determine the contents of their
19 social media feeds is entitled to First Amendment protection because such processes not only
20 recommend content based on user behavior but also implement plaintiffs' preferred content
21 moderation policies. Google Mot. at 11-12; Meta Mot. at 11; TikTok Mot. at 14-15. But plaintiffs'
22 as-applied challenges require "a review of the application of [the] statute to the conduct of the
23 party before the Court." *Members of City Council of City of L.A. v. Taxpayers for Vincent*, 466
24 U.S. 789, 798 (1984). And here, a review of S.B. 976 establishes that plaintiffs' content moderation
25 policies are not impacted by S.B. 976.

1 In any event, plaintiffs’ own evidence demonstrates that their content moderation, which
2 may implement human-directed content policies but do not fall within the scope of S.B. 976, are
3 distinct from their algorithmic processes that simply recommend media based on user behavior and
4 thus fall within the scope of S.B. 976. For example, a witness for Google states that YouTube’s content
5 moderation processes remove or deprioritize content on the platform based on whether the content
6 violates YouTube’s “Community Guidelines,” while the YouTube “Recommender System” makes
7 predictions about which content a user will find enjoyable. Decl. of Cristos Goodrow in Support of
8 Google LLC & YouTube, LLC’s Mot. for Prelim. Inj. ¶¶ 11, 24, *Google LLC & YouTube, LLC*, No.
9 5:25-cv-9795 (Nov. 14, 2025), ECF No. 23-1 (“Goodrow Decl.”). A witness for Meta similarly
10 states that “Meta employs a multi-stage process” that “excludes content . . . for violating Meta’s
11 Community Standards” and separately “make[s] predictions about which content users may find
12 relevant and valuable.” Decl. of Lars Backstrom in Support of Meta’s Mot. for Prelim. Inj. ¶ 7, *Meta*
13 *Platforms, Inc.*, No. 5:25-cv-9792 (Nov. 12, 2025), ECF No. 19-1 (“Backstrom Decl.”); *see also*
14 *TikTok Mot.* at 14 (noting that TikTok’s “content moderation process” makes “editorial judgments”
15 separate from “considerations of individualized preference[s]”).
16
17

18 Plaintiffs cannot rely on only the subset of processes used in content moderation to
19 establish the expressive nature of every algorithmic process they perform. Indeed, the Supreme
20 Court in *Moody* drew a distinction between content moderation policies—which the Court viewed
21 as inherently expressive—and algorithmic processes that “respond solely to how users act online.”
22
23
24
25
26
27

1 *Moody*, 603 U.S. at 736 & n.5, 737.³⁰ With respect to the latter, the majority observed that such
2 processes do not necessarily involve expression because they provide only “the content [users]
3 appear to want, without any regard to independent content standards.” *Id.* at 736 n.5; *see also id.* at
4 745-46 (Barrett, J., concurring) (noting that algorithmic processes do not necessarily “implement
5 [a] human being[’s] inherently expressive choice”). And three concurring Justices expressed
6 further skepticism about the expressive nature of *any* algorithmic process, including even the
7 content moderation processes at issue, because such processes increasingly rely on “machine
8 learning” or “artificial intelligence” and therefore may not be as “expressive as the decisions made
9 by humans.” *Id.* at 771, 795 (Alito, J., concurring, joined by Thomas & Gorsuch, JJ.).

11 Apart from irrelevant evidence about content moderation and other processes not subject
12 to S.B. 976 (*supra* at 13-14), plaintiffs provide no evidence establishing that the algorithms
13 regulated by S.B. 976 “implement [a] human being[’s] inherently expressive choice.” *See id.* at 745-
14 46 (Barrett, J., concurring). Plaintiffs’ evidence instead shows that such algorithms are the
15 byproduct of machine learning or artificial intelligence systems that function independently of
16 human editorial judgment. For example, a witness for Google states that the YouTube platform’s
17 recommendations are generated by a “machine-learning system[.]” built by engineers to
18 “dynamically evolve and adapt” based on “billions of signals” in order to “predict which content
19 will be relevant, enjoyable, and valuable to a particular user at a particular moment.” Goodrow Decl.
20 ¶¶ 11, 13. A witness for Meta states that their platforms use a “ranking and recommendation

24 ³⁰ The majority opinion by Justice Kagan was joined in full by four other justices: Chief
25 Justice Roberts and Justices Sotomayor, Kavanaugh, and Barrett. Justice Jackson joined certain parts
26 of the majority opinion.

1 system[]” to “recommend content from people or accounts that a user may not follow” (Backstrom
2 Decl. ¶ 6), but a cited source clarifies that such recommendations are the outputs of an “AI system”
3 that “automatically determines which content shows up in [a user’s] feed . . . by predicting what
4 [the user is] most likely to be interested in or engage with.”³¹ TikTok similarly relies on a
5 “recommendation system model[]” that automatically predicts “how likely content will be
6 interesting, engaging, or informative to a particular person.”³² Decl. of Joey Zhou in Support of
7 Pl.’s Mot. for Prelim. Inj. ¶¶ 12, 15, *TikTok Inc.*, No. 5:25-cv-9789 (Nov. 18, 2025), ECF No. 20-
8 1.

9
10 No court has concluded that artificial intelligence or machine learning systems are entitled
11 to First Amendment rights, and the Supreme Court and the Ninth Circuit have expressed
12 skepticism that such systems could necessarily implement a human being’s expressive choice. *See*
13 *Moody*, 603 U.S. at 736 & n.5; *see also id.* at 745-46 (Barrett, J., concurring); *id.* at 770-71 (Alito,
14 J., concurring, joined by Thomas & Gorsuch, JJ.); *NetChoice*, 152 F.4th at 1021 n.6. That is
15 because artificial intelligence and machine learning systems “writ[e] their own rules using complex
16 math that gets executed automatically,” and human beings do not “participate in the algorithm’s
17

18
19
20 ³¹ Meta, [Instagram Feed Recommendations AI System](#) (updated Sept. 4, 2025) (cited in
21 Backstrom Decl. at 2 n.3).

22 ³² Plaintiff TikTok has also represented that its algorithmic processes “recommend[] videos
23 to users based on content-neutral user and community behavior,” and that the platform’s “algorithm
24 doesn’t care about the content—it doesn’t have an agenda. It doesn’t qualitatively understand” the
25 content that it shows. Compl. & Jury Demand ¶ 160, *Commonwealth v. TikTok Inc.*, No.
26 2484CV2638 (Mass. Super. Ct. Oct. 8, 2024), File Reference No. 1 (quotation marks omitted).
27

1 fundamental task: determining the logic that shapes the algorithm’s predictions.”³³ As a result, such
2 systems are effectively a “black box” because the reasons they produce a particular output are so
3 “complex” that they are “incapable of human understanding.”³⁴

4 Plaintiffs ask this Court to conclude that a machine learning or artificial intelligence
5 algorithm is as expressive as a librarian recommending a book, or a newspaper editor selecting
6 articles. *See* Google Mot. at 4-5; Meta Mot. at 3. But at a minimum, such an argument requires
7 compelling evidence describing how plaintiffs are engaged in editorial expression when they
8 merely use an automated system that relies on metrics and creates outputs that plaintiffs can neither
9 understand nor explain. *See NetChoice*, 152 F.4th at 1021 n.6. On the current record, plaintiffs
10 have not made that showing and have therefore failed to establish a likelihood of success on the
11 merits.
12
13
14
15
16
17
18
19
20

21 ³³ Mackenzie Austin & Max Levy, [*Speech Certainty: Algorithmic Speech and the Limits of the*](#)
22 [*First Amendment*](#), 77 Stan. L. Rev. 1, 42-43 (2025).
23

24 ³⁴ *Id.* at 60-61 (quotation marks omitted); *see also* W. Nicholson Price II & Arti K. Rai,
25 [*Clearing Opacity Through Machine Learning*](#), 106 Iowa L. Rev. 775, 778-79 (2021) (describing
26 “black box” nature of machine learning).
27

1 **CONCLUSION**

2 This Court should deny plaintiffs' motions for a preliminary injunction.

3 Dated: New York, New York
4 February 27, 2026

5 Respectfully submitted,

6 LETITIA JAMES
7 *Attorney General*
8 *State of New York*
9 Attorney for Amici Curiae

10 By: /s/ Blair J. Greenwald
11 Blair J. Greenwald (admitted pro hac vice)
12 Assistant Solicitor General

13 BARBARA D. UNDERWOOD
14 *Solicitor General*
15 ESTER MURDUKHAYEVA
16 *Deputy Solicitor General*
17 KWAME N. AKOSAH
18 BLAIR J. GREENWALD
19 *Assistant Solicitors General*
20 *of Counsel*

21 28 Liberty Street
22 New York, NY 10005
23 (212) 416-6102

24
25
26
27
28 (Counsel list continues on next page.)

1 KRISTIN K. MAYES
2 *Attorney General*
3 *State of Arizona*
2005 North Central Avenue
Phoenix, AZ 85004

4 PHILIP J. WEISER
5 *Attorney General*
6 *State of Colorado*
1300 Broadway, 10th Floor
Denver, CO 80203

8 WILLIAM TONG
9 *Attorney General*
10 *State of Connecticut*
165 Capitol Avenue
Hartford, CT 06106

11 KATHLEEN JENNINGS
12 *Attorney General*
13 *State of Delaware*
820 North French Street
Wilmington, DE 19801

15 ANNE E. LOPEZ
16 *Attorney General*
17 *State of Hawai'i*
425 Queen Street
Honolulu, HI 96813

19 RAÚL R. LABRADOR
20 *Attorney General*
21 *State of Idaho*
700 West Jefferson Street, Suite 210
P.O. Box 83720
Boise, ID 83720

23 KWAME RAOUL
24 *Attorney General*
25 *State of Illinois*
115 South LaSalle Street
Chicago, IL 60603

AARON M. FREY
Attorney General
State of Maine
6 State House Station
Augusta, ME 04333

ANTHONY G. BROWN
Attorney General
State of Maryland
200 Saint Paul Place
Baltimore, MD 21202

ANDREA JOY CAMPBELL
Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

DANA NESSEL
Attorney General
State of Michigan
P.O. Box 30212
Lansing, MI 48909

KEITH ELLISON
Attorney General
State of Minnesota
102 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

AARON D. FORD
Attorney General
State of Nevada
100 North Carson Street
Carson City, NV 89701

JOHN M. FORMELLA
Attorney General
State of New Hampshire
1 Granite Place South
Concord, NH 03301

JENNIFER DAVENPORT
Attorney General
State of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
Trenton, NJ 08625

RAÚL TORREZ
Attorney General
State of New Mexico
408 Galisteo St.
P.O. Drawer 1508
Santa Fe, NM 87504

JEFF JACKSON
Attorney General
State of North Carolina
114 West Edenton Street
Raleigh, NC 27603

DAN RAYFIELD
Attorney General
State of Oregon
1162 Court Street NE
Salem, OR 97301

PETER F. NERONHA
Attorney General
State of Rhode Island
150 South Main Street
Providence, RI 02903

STANFORD PURSER
Solicitor General
State of Utah
160 East 300 South, 5th Floor
Salt Lake City, UT 84111

CHARITY R. CLARK
Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609

JAY JONES
Attorney General
Commonwealth of Virginia
202 North Ninth Street
Richmond, VA 23219

NICHOLAS W. BROWN
Attorney General
State of Washington
P.O. Box 40100
Olympia, WA 98504

JOSHUA L. KAUL
Attorney General
State of Wisconsin
17 West Main Street
Madison, WI 53703

BRIAN L. SCHWALB
Attorney General
District of Columbia
400 6th St. NW, Suite 8100
Washington, DC 20001