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To be argued by:
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State of New York
Court of Appeals

DIONA PATTERSON, etc., et al.,

Appellants,

v.

META PLATFORMS, INC., et al.,

Respondents.

(Captions continue inside front cover.)

**BRIEF FOR OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL
AS AMICUS CURIAE**

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(Captions continued from front cover.)

FRAGRANCE HARRIS STANFIELD, et al.,

Appellants,

v.

ALPHABET INC., et al.,

Respondents.

WAYNE M. JONES, etc.,

Appellants,

v.

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Respondents.

KIMBERLY SALTER, etc., et al.,

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PRELIMINARY STATEMENT AND INTERESTS OF AMICUS CURIAE

The New York Attorney General submits this amicus brief in support of plaintiffs-appellants in these four appeals. These cases raise important questions about whether social media companies can be held liable for intentionally designing addictive platforms that harm the mental health of children and teens—actions that, in this particular case, allegedly prompted eighteen-year-old Payton Gendron to commit a racially motivated mass shooting at a Buffalo supermarket in 2022. The Appellate Division, Fourth Department, held that Section 230 of the Communications Decency Act (CDA) and the First Amendment of the United States Constitution categorically shield the platforms from any liability stemming from their design choices. This Court should reverse.

The Attorney General submits this amicus brief to address two of the legal questions presented in these cases.¹ *First*, the Appellate

¹ The Attorney General takes no position on whether plaintiffs' addiction-based claims satisfy proximate causation—a fact-specific inquiry that is generally reserved for juries, *see Hain v. Jamison*, 28 N.Y.3d 524, 530 (2016).

Division erred in holding that plaintiffs' tort claims are barred by Section 230 and the First Amendment as a matter of law. Courts around the country have held that Section 230 does not apply where, as here, plaintiffs seek to hold platforms liable for their harmful design features. The Appellate Division improperly conflated the statutory scope of Section 230 with common-law causation analysis when it concluded, at the pleading stage, that Gendron's actions were caused by the substance of the content he viewed rather than by the platforms' addictive features. The First Amendment likewise does not protect defendant platforms' intentionally addictive design because engagement-driven algorithms and automated, content-agnostic features such as infinite scroll, autoplay, and notifications are not expressive.

Second, defendants are wrong to argue that social media platforms cannot qualify as "products" under New York law. Although the Appellate Division did not address this issue, if the Court decides this question, the Court should make clear that social media platforms *can* be subject to products liability where, as here, the plaintiffs' claims challenge the platforms' design features and not the specific

content that they publish. Defendants are wrong to insist otherwise when they design, market, distribute, and profit from their platforms—just like any tangible product.

The Attorney General has a vital interest in ensuring that the law governing social media platform liability is properly interpreted. Social media addiction is an emergent issue affecting millions of young people in New York. The proper scope of defendant companies' liability for designing intentionally addictive products is therefore an issue of paramount importance to the Attorney General's ongoing efforts to address this public health crisis.

Indeed, the Attorney General has taken a number of regulatory and enforcement actions to combat social media addiction among youth. For example, the Attorney General is currently suing several social media companies for designing (and misleading the public about) their addictive platforms. Additionally, the Attorney General recently promulgated regulations to implement a new state law that will prohibit social media companies from offering minors an addictive feed without parental consent. These critical measures to protect

the public all could be jeopardized by the Appellate Division’s erroneous reasoning.

STATEMENT OF THE CASE

A. Factual and Procedural Background

On May 14, 2022, a teenager, Payton Gendron, carried out a mass shooting at a grocery store in a predominantly Black neighborhood of Buffalo, New York. Ten individuals were killed, and three were injured. Gendron embraced the Great Replacement Theory, which “posits that white populations in Western countries are being deliberately replaced by non-white people of color.” (Record (R.) 6615.)

Long before Gendron carried out the attack, he began using—and allegedly became addicted to—various social media platforms. (See R.5043-5044, 6151-6152.) In Gendron’s own words, he spent “years of [his] life just being online” (R.5044 (¶ 8 & n.3) (quotation marks omitted)), which left him isolated, “barely feeling anything,” and feeling like he had “no other choice but to commit this attack” (R.6152 (¶¶ 163-164 & n.17)).

In the aftermath of the tragedy, survivors of the mass shooting and family members of victims brought four civil lawsuits against

Gendron’s parents and various entities alleged to have played a role in the attack. At issue in these appeals are plaintiffs’ tort claims against social media companies that operated online platforms Gendron used “at some point before or during the attack.”² (R.6615.)

The plaintiffs in each of the four lawsuits asserted various tort causes of action against the social media defendants, including “strict products liability based on defective design and failure to warn.” (R.6615.) According to plaintiffs’ operative complaints, the platforms’ addictive design features contributed to Gendron’s declining mental health, which left him isolated, vulnerable to radicalization, and ultimately prompted him to carry out the mass shooting. *See* Br. for Pls.-Appellants Kimberly J. Salter et al. (*Salter* Br.) 17 (citing R.2795-2799 (¶¶ 551-569), R.5133-5137 (¶¶ 434-453), R.6239-6244 (¶¶ 547-566)); *see also* Br. for Pls.-Appellants Diona Patterson et al. (*Patterson* Br.) 15-16 (citing R.242 (¶¶ 544, 546), R.248 (¶¶ 563, 566-567)).

² The social media defendants include Meta, Snap, Alphabet, Google, YouTube, Discord, Reddit, Amazon, Twitch, and 4Chan. (R.6615.)

The social media defendants in each action moved to dismiss the complaints, principally arguing that they are entitled to immunity under Section 230 of the CDA and the First Amendment, and that the plaintiffs had failed to adequately plead causation. (*See* R.32, 36, 6616.) In March 2024, Supreme Court, Erie County (Feroletto, J.), denied the motions to dismiss.³ (*See* R.30-39, 65-74, 80-88, 106-115.) The trial court concluded that plaintiffs’ claims fall outside the scope of Section 230 because plaintiffs sufficiently alleged that the online platforms were liable as manufacturers of defective “products,” and not as publishers of harmful third-party content. (*See, e.g.*, R.34-36.) The trial court further concluded that proximate causation is generally an issue of fact for the jury, and thus declined to dismiss plaintiffs’ claims on this basis. (*E.g.*, R.36-37.)

The social media defendants timely appealed the denial of their motions to dismiss in each case, and the Appellate Division consolidated the appeals for argument. (*See* R.6615.)

³ The trial court later denied defendants’ motion to dismiss the amended complaints in two of the actions for the same reasons stated in its original decisions. (*See* R.95-99, 122-126.)

B. The Appellate Division’s Decision

On July 25, 2025, a divided panel of the Fourth Department reversed the denial of defendants’ motions to dismiss. (R.6623-6624.) The three-justice majority reasoned that plaintiffs’ claims are barred by Section 230 because they seek to hold the social media defendants liable for publishing third-party content. (R.6617-6619.) Specifically, the majority concluded that plaintiffs’ claims necessarily turned on “the *content* of the material the shooter consumed” on the platforms because it is implausible that “the allegedly addictive features of the social media platforms (regardless of content)” could have “caused the shooter to commit mass murder.” (R.6622.)

The majority further reasoned that, even if defendants’ content-recommendation algorithms were considered “first-party speech,” rather than a means of publishing third-party content, the algorithms still would be “protected by the First Amendment” under the U.S. Supreme Court’s decision in *Moody v. Netchoice, LLC*, 603 U.S. 707 (2024). (R.6620.) According to the majority, *Moody* requires that courts find the content-recommendation algorithms at issue to be expressive, even though they are programmed to push content solely “for the

purpose of maximizing [the user’s] engagement.” (*See* R.6620.) The majority thus declared that “the interplay between section 230 and the First Amendment gives rise to a ‘Heads I Win, Tails You Lose’ proposition in favor of the social media defendants.”⁴ (R.6621.)

In dissent, Justices Bannister and Nowak rejected the view that plaintiffs’ causes of action are barred by Section 230 because they solely “seek to hold defendants responsible for radicalizing the shooter” by feeding him harmful “third-party content.” (R.6625.) They would have held that “[t]he operative complaints, when read as a whole,” allege that the platforms’ features “are addictive . . . because of the inherent nature of their design” (R.6625), and that the shooter’s “addiction [to social media], combined with his age and gender, left him particularly susceptible to radicalization and violence—culminating in the tragedy in Buffalo.” (R.6624.)

⁴ Because the majority concluded that Section 230 and the First Amendment bar all of plaintiffs’ claims, it declined to address whether social media platforms constitute products under New York law. (*See* R.6618 (“assuming, *arguendo*, that the social media defendants’ platforms are products (as opposed to services)”).)

With respect to certain addictive features, such as video autoplay and infinite scroll, the dissent agreed that these features “tangentially involve third-party content, and thus a discussion of Section 230 is required.” (R.6628.) But the dissent ultimately concluded that these features “constitute[] the creation or development of information that would render defendants first-party content providers and, thus, not immune from liability under section 230.” (R.6629 (quotation marks omitted)). The dissent further reasoned that the First Amendment does not protect these addictive features and that nothing in the U.S. Supreme Court’s decision in *Moody*, 603 U.S. 707, held otherwise. (R.6629-6630).

Finally, the dissent concluded that plaintiffs sufficiently pleaded causation, and that defendants’ platforms are products under New York law. (R.6627, 6630.)

ARGUMENT

This Court should reverse the decision below dismissing plaintiffs' tort claims against the social media defendants.

First, neither Section 230 of the CDA nor the First Amendment confers on defendants absolute immunity over their platforms' addictive design features. The Appellate Division's contrary conclusion is not only legally erroneous, but also profoundly harmful to any attempt—including the State's ongoing efforts—to hold these companies accountable for their role in perpetuating the public health crisis caused by social media addiction.

Second, social media platforms can qualify as products under New York product liability law where, as here, plaintiffs' theory of liability challenges the platforms' defective design, and not the content that the platforms publish.

POINT I

FEDERAL LAW DOES NOT BAR PLAINTIFFS’ ADDICTION-BASED CLAIMS

A. The Appellate Division Erred in Holding that Section 230 Bars Plaintiffs’ Claims.

1. Section 230 does not shield social media companies from liability for designing addictive platforms.

Contrary to the Appellate Division’s conclusion (R.6621), Section 230 of the CDA does not provide social media companies carte blanche to design a product that addicts young users and then conceal these harms from the public. In relevant part, Section 230 states only that “[n]o provider or user of an interactive computer service shall be treated as *the publisher or speaker* of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1) (emphasis added); *see Shiamili v. Real Estate Grp. of N.Y., Inc.*, 17 N.Y.3d 281, 286-87 (2001) (setting forth operative test).

Courts have repeatedly underscored that Section 230 is not a “get-out-of-jail-free card” for businesses that publish user content on the internet. *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 853 (9th Cir. 2016); *see also, e.g., Fair Hous. Council of San Fernando Val.*

v. Roommates.com, LLC, 521 F.3d 1157, 1164 (9th Cir. 2008). Instead, courts must carefully scrutinize “whether *the duty* that the plaintiff alleges the defendant violated derives from the defendant’s status or conduct as a publisher or speaker.” *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 740 (9th Cir. 2024) (emphasis added) (quotation marks omitted). Where the alleged duty “springs from . . . obligations the defendant has in a different capacity,” *id.* at 742, or where it would not “necessarily require [the defendant] to monitor third-party content,” *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019), Section 230 immunity does not apply.

Critically, courts across the country agree that the defense is unavailable where a plaintiff’s alleged harm stems from something other than the substance of third-party content. *See, e.g., Henderson v. Source for Pub. Data, L.P.*, 53 F.4th 110, 122 (4th Cir. 2022); *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1093-94 (9th Cir. 2021); *Commonwealth v. Meta Platforms, Inc.*, 497 Mass. 384, 407, 409-10 (2026). This limiting principle makes sense. The “scope of the role of a traditional publisher, and therefore the scope of what § 230(c)(1) protects, is guided by the common law.” *Henderson*, 53 F.4th at 121

(quotation marks omitted). At common law, “to hold someone liable as a publisher . . . was to hold them responsible for the content’s improper character.” *Id.* at 122. Thus, for Section 230 to apply, courts must ascertain that the plaintiff is seeking to impose liability “on account of some improper content within [the defendants’] publication.” *Id.*; see *Commonwealth v. Meta Platforms, Inc.*, 497 Mass. at 400-01 (collecting cases holding the same).

2. The Appellate Division erroneously conflated Section 230 with causation principles.

Rather than engage with this settled framework, the Appellate Division summarily concluded that Section 230 bars plaintiffs’ claims based on the majority’s assumption that plaintiffs’ injuries were caused by the extremist content that Gendron consumed on social media rather than by the platforms’ addictive design. Specifically, the majority opined that plaintiffs’ claims necessarily “seek to hold the social media defendants liable for the racist and violent content” posted on their platforms because plaintiffs “could not possibly allege[] that the shooter would have murdered Black people had he become addicted to anodyne content.” (R.6622.)

This reasoning improperly conflates the Section 230 and causation inquiries. Instead of analyzing whether plaintiffs’ challenge to each of the addictive design features implicates defendants’ duty as publishers, the Appellate Division bypassed this analysis altogether by categorically declaring that only the harmful nature of the content that Gendron viewed—and not these addictive features—could have caused him to carry out the attack.

The fact that Gendron was exposed to extremist content on various social media platforms does not automatically confer on these platforms blanket immunity over the *design* of all content-related features. As federal and state courts have widely recognized, the CDA does not “provide immunity . . . solely because a cause of action would not otherwise have accrued but for the third-party content.” *HomeAway.com, Inc.*, 918 F.3d at 682; *see, e.g., Commonwealth v. Meta Platforms, Inc.*, 497 Mass. at 402 (rejecting but-for test). The litmus test is instead “whether the claim seeks to hold [the platform] liable for harm stemming from third-party information that it published.” *Commonwealth v. Meta Platforms, Inc.*, 497 Mass. at 409.

Accordingly, courts have applied Section 230 to bar claims premised on platforms’ recommendation of, or failure to screen, harmful third-party content. *See, e.g., M.P. ex rel. Pinckney v. Meta Platforms Inc.* 127 F.4th 516, 526 (4th Cir. 2025) (“racist and hate-driven content”); *Doe 1 v. Twitter, Inc.*, 148 F.4th 635, 641 (9th Cir. 2025) (child pornography); *Force v. Facebook, Inc.*, 934 F.3d 53, 65-66 (2d Cir. 2019) (Hamass-affiliated content); *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1098 (9th Cir. 2019) (“heroin-related discussion group”). But courts have steadfastly refused to apply Section 230 where the alleged harm stemmed from *the design* of a platform’s user-interface features. *See infra* at 17 & n.5.

In light of the above, the Appellate Division was required to consider whether the complaints adequately alleged that the challenged platform features addicted Gendron and predisposed him to commit the attack “independent of the content provided by third-party users.” *See Commonwealth v. Meta Platforms, Inc.*, 497 Mass. at 409 As plaintiffs point out, their complaints are replete with such allegations. For example, plaintiffs alleged that “the social media companies intentionally designed their platforms to addict children,

regardless of content.” *Salter* Br. 47; *id.* at 12-15 (citing specific allegations). As a result, “the shooter became more isolated and reclusive” due to his “social media use and addiction,” which “left him particularly susceptible to radicalization and violence.” (R.6624.) *See Salter* Reply Br. 11-12; *Patterson* Br. 43.

There is no basis to apply Section 230 to bar such addiction-based claims. The Court’s task “in every case involving statutory interpretation” is to “ascertain the legislative intent.” *People v. Roberts*, 31 N.Y.3d 406, 418 (2018) (quotation marks omitted). Here, it is undisputed that Congress enacted Section 230 to “encourage internet companies to monitor and remove offensive content without fear that they would thereby become liable for all defamatory or otherwise unlawful messages that they didn’t edit or delete.” *Calise*, 103 F.4th at 739 (alteration and quotation marks omitted). But there is no indication in the statute’s text or history that Congress intended to shield internet companies from liability for their *own wrongful conduct* in adopting user-interface features that are designed to lure users onto their platforms and to keep them from leaving.

Courts—including the Massachusetts Supreme Judicial Court (SJC) and Nevada Supreme Court—have thus repeatedly rejected social media platforms’ invocation of Section 230 to shield harmful *design choices*. See, e.g., *Commonwealth v. Meta Platforms, Inc.*, 497 Mass. at 409-10 (declining to apply Section 230 to bar challenge to Instagram’s addictive features); *District of Columbia v. Meta Platforms, Inc.*, No. 2023-CAB-6550, 2024 D.C. Super. LEXIS 27, at *3-8, *23-26, *30-31 (D.C. Super. Ct. Sept. 9, 2024) (same); *TikTok, Inc. v. Eighth Jud. Dist. Ct.*, 578 P.3d 640, 649-52 (Nev. 2025) (same, for TikTok’s addictive features); *Doe 1*, 148 F.4th at 645 (same, for Twitter’s report mechanism); *Lemmon*, 995 F.3d at 1093-94 (same, for Snapchat’s speed filter).⁵ This Court should do the same.

⁵ See also *Vermont v. Meta Platforms, Inc.*, No. 23-cv-4453, 2024 WL 3741424, at *5 (Vt. Super. Ct. July 29, 2024) (holding that addiction-based claims against Instagram’s features “do not turn on content, and thus are not barred by Section 230”), *aff’d*, 2025 VT 51 (2025), *cert. denied*, No. 25-909, 2026 WL 1463234 (U.S. May 26, 2026); *Social Media Cases*, Nos. JCCP 5255, 22STCV21355, 2023 WL 6847378, at *1, *30-33 (Cal. Super. Ct. Oct. 13, 2023) (concluding the same in joint coordinated proceedings against Facebook, Instagram, Snapchat, TikTok, and YouTube challenging their addictive features).

3. Defendants’ remaining arguments in favor of Section 230 immunity are meritless.

Defendants raise a host of other arguments in support of their claim to Section 230 immunity, but none is availing. *First*, defendants rely on inapposite cases where courts applied Section 230 to bar claims premised on *the substance* of third-party content. *See* Br. for Defs.-Resp’ts (Defs.’ Br.) 22-23 (citing *M.P., Doe 1, Force*, and *Dyroff* (discussed *supra* at 15)). As explained, this distinction matters. While Section 230 may, in certain instances, shield platforms for harms resulting from publishing others’ defamatory, racist, or even violent content, it does not grant blanket immunity for the platforms’ actions in implementing user-interface features that are designed to addict.

Second, defendants are wrong to insist that Section 230 applies because their platforms’ design features are editorial “tools” that facilitate the publication of third-party content. *See* Defs.’ Br. 29-30 (quotation marks omitted). Notwithstanding defendants’ creative rebranding, the bottom line is the same: platforms can be held liable “even for their neutral tools, so long as plaintiffs’ claims do not blame them for the content that third parties generate with those tools.” *Lemmon*, 995 F.3d at 1094 (quotation marks omitted).

The Massachusetts SJC’s decision in *Commonwealth v. Meta Platforms*, 497 Mass. 384, is illustrative. There, the court held that Section 230 did not bar Massachusetts’s challenge to Instagram’s addictive design features—including infinite scroll, autoplay, and ephemeral content—even though these features control “how, whether, and for how long information is published.” *Id.* at 409. As the court explained, “the fact that a claim concerns publishing activities, including the use of algorithms in connection with publishing activities, is not enough to bring the claim within the immunity provided by § 230(c)(1).” *Id.* at 409-10. Section 230 simply does not apply where the claim “alleges that the features themselves induce compulsive use.” *Id.* at 409.

The same reasoning holds here. Even if the challenged features can properly be understood as tools to facilitate the publication of third-party content, plaintiffs have established that their addiction-based theory of liability does not treat defendants as publishers because it is solely predicated on defendants’ own acts in designing and deploying addictive user-interface features and concealing their known harms. *See Patterson* Br. 43; *Salter* Reply Br. 11-12.

Third, defendants miss the mark in asserting that Section 230 bars plaintiffs’ failure-to-warn claims because those claims are supposedly premised on defendants’ failure to moderate harmful third-party content. *See* Defs.’ Br. 38-40. According to plaintiffs, the operative complaints in fact allege that defendants violated their duty to warn because they “have long known that their platforms, designed to be addictive, *are* addictive.” *Salter* Br. 14; *see id.* at 29, 45 (citing specific allegations).

Plaintiffs’ failure-to-warn claims are thus different in kind from those at issue in *Doe v. Grindr Inc.*, 128 F.4th 1148 (9th Cir. 2025). *See* Defs.’ Br. 38-39. There, the plaintiff sought to hold Grindr liable for failing to warn about the risk of harmful third-party conduct on its platform—specifically, adults using the platform to engage in “child sexual exploitation.” *Doe v. Grindr Inc.*, 128 F.4th at 1154. The Ninth Circuit concluded that Section 230 barred this claim because Grindr’s alleged duty to warn stemmed from the platform’s failure

to police third-party content—a core publishing duty—and not from Grindr’s “independent knowledge” of the harmful conduct. *See id.*⁶

Here, by contrast, defendants’ duty to warn squarely arises from their actual knowledge of the addictive harms posed by their platforms’ design features. Accordingly, both plaintiffs’ design-defect claims and their failure-to-warn claims fall squarely outside the scope of Section 230. *See Internet Brands, Inc.*, 824 F.3d at 849, 851, 853 (denying Section 230 immunity where website had actual knowledge of alleged harm from “outside source”).

⁶ *See also Estate of Bride ex rel. Bride v. Yolo Techs., Inc.*, 112 F.4th 1168, 1180 (9th Cir. 2024) (applying Section 230 to bar failure-to-warn claim based on “harassing and bullying posts”); *Wozniak v. YouTube, LLC*, 100 Cal. App. 5th 893, 899-902, 914-18 (2024) (same, for “scam videos”).

B. The Appellate Division Erred in Holding That the First Amendment Bars Plaintiffs' Claims.

1. *Moody* does not compel constitutional protection for every aspect of a social media platform's design.

The Appellate Division erroneously concluded that the U.S. Supreme Court's decision in *Moody* required finding that plaintiffs' claims were barred by the First Amendment. (See R.6620.) In *Moody*, the Court held that social media platforms' use of algorithms to remove or deprioritize third-party content that the platforms disfavored was protected by the First Amendment. See 603 U.S. at 720-21, 734-38. But the Court expressly declined to hold that platforms' use of content-recommendation algorithms that "respond solely to how users act online . . . without any regard to independent content standards" is expressive. See *id.* at 736 & n.5; see also *id.* at 746 (Barrett, J., concurring) (cautioning that "technology may attenuate the connection between" content-curation *actions* and "human beings' constitutional protected right to decide for themselves the ideas and beliefs deserving of expression, consideration, and adherence" (alteration and quotation marks omitted)).

Moody therefore lends no support for holding that automated features such as autoplay, infinite scroll, and notifications—which do not filter or recommend content in any way—are expressive speech protected by the First Amendment. And as for the content-recommendation algorithms that plaintiffs challenge, they fall precisely within *Moody*’s carve-out because they are allegedly based on user-interaction data, and *not* the platforms’ own independent content standards. *See Salter* Br. 52.

The Appellate Division further erred in concluding that defendants’ content-recommendation algorithms are expressive because they “served [Gendron] material that they chose for the purpose of maximizing his engagement.” (R.6620.) As plaintiffs explained, the challenged algorithms did so precisely by relying on user-based inputs—i.e., the type of inputs that *Moody* declined to hold were expressive. *See Salter* Br. 52; *Salter* Reply Br. 32. The fact that defendants’ algorithms served Gendron increasingly extremist content that he “was *not* seeking out” (Defs.’ Br. 63), is immaterial, when plaintiffs allege that the algorithms selected this content based solely on user-based inputs (*see Salter* Reply Br. 32). *See also TikTok*,

Inc. v. Eighth Jud. Dist. Ct., 578 P.3d at 652 (rejecting argument that *Moody* protects “algorithms and other design features that employ user-interaction data to shape an addictive user experience”); *District of Columbia v. Meta Platforms, Inc.*, 2024 D.C. Super. LEXIS 27, at *42-43 (same).

To the extent defendants now dispute that their platforms rely on such algorithms, or contend that their algorithms rely on both user-based *and* other inputs (*see* Defs.’ Br. 63-64), that factual dispute is not a proper basis upon which to dismiss plaintiffs’ claims. *See Carlson v. American Intl. Grp., Inc.*, 30 N.Y.3d 288, 297-98 (2017) (requiring courts to accept as true plaintiffs’ well-pleaded allegations on a motion to dismiss).

2. Defendants’ remaining attempts to shore up their First Amendment defense fare no better.

As a threshold matter, defendants are wrong in contending that plaintiffs’ tort claims impermissibly seek to suppress either defendants’ own speech or their distribution of third-party speech. *See* Defs. Br. 54-55, 59-60, 66-69. That argument fails for the same reason as defendants’ Section 230 defense. As explained (at 15-16), plaintiffs’

addiction-based theory of liability is not premised on defendants’ publication of racist or extremist content, but rather, their actions in implementing addictive design features that keep young users glued to their platforms, regardless of the content those users are viewing. This case is thus patently distinguishable from cases like *Brown v. Entertainment Merchants Ass’n*, where the Supreme Court struck down a California law banning the sale or rental of “violent video games” to minors—i.e., a direct restriction on a particular category of content. *See* 564 U.S. 786, 789, 805 (2011).⁷

There is likewise no merit to defendants’ claim that their platforms’ addictive features are protected by editorial discretion. *See* Defs.’ Br. 53, 65-66. Foundational precedent defining the contours of editorial discretion makes clear that what the First Amendment prohibits is government interference with a publisher’s intended

⁷ *See also Courtright v. Epic Games, Inc.*, 795 F. Supp. 3d 1156, 1166 (W.D. Mo. 2025) (holding that First Amendment barred claim based on addictive “video game content”); *Angelilli v. Activision Blizzard, Inc.*, 781 F. Supp. 3d 691, 702-03 (N.D. Ill. 2025) (same); *Watters v. TSR, Inc.*, 715 F. Supp. 819, 821 (W.D. Ky. 1989) (same, for addictive “Dungeons and Dragons’ material”); Defs. Br. 52 n.20 (citing other tort cases based on violent video game, movie, and song content).

expression. *See Moody*, 603 U.S. at 728-31 (surveying precedent). Thus, in *Miami Herald Publishing Co. v. Tornillo*, the U.S. Supreme Court held that the government could not force a newspaper to “print that which it would not otherwise print.” 418 U.S. 241, 256 (1974). And, in *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston, Inc.*, the Court barred the government from compelling parade organizers to admit “a group imparting a message the organizers d[id] not wish to convey.” 515 U.S. 557, 559 (1995).

Plaintiffs’ claims are nothing like the regulations at issue in *Tornillo* and *Hurley*. The claims do not compel defendants to convey any message with which they disagree. Nor have defendants identified any plausible expression that their addictive features are intended to convey. At most, defendants insist that their decision to use algorithms to push content that maximizes user engagement is inherently expressive and no different in substance from a librarian “suggesting books” to a patron or one friend “making a playlist” for another. *See* Defs.’ Br. 65. But there is in fact a world of difference between the two: whereas the librarian and friend are applying *their own independent judgment* in selecting books and songs that *they*

think will suit an individual's tastes, defendants' algorithms apply no such independent content standards and, instead, rely solely on user-interaction data.

Accordingly, users would not understand any of the recommended content to reflect *the platforms'* editorial judgment or expression. *Cf. Rumsfeld v. FAIR*, 547 U.S. 47, 66 (2006) (finding conduct nonexpressive where “[a]n observer” has “no way of knowing” its intended message). Courts have therefore soundly rejected the notion that such addictive design features are expressive. *See, e.g., TikTok, Inc. v. Eighth Jud. Dist. Ct.*, 578 P.3d at 652; *Social Media Cases*, Nos. JCCP 5255, 22STCV21355, 2023 WL 6847378, at *38 (Cal. Super. Ct. Oct. 13, 2023); *District of Columbia v. Meta Platforms, Inc.*, 2024 D.C. Super. LEXIS 27, at *39.

But even if this Court were to conclude otherwise, any effect on defendants' speech would withstand constitutional scrutiny. Indeed, contrary to defendants' assertion (Defs.' Br. 54, 56-57), plaintiffs' addiction-based claims neither seek to restrict the content that defendants may publish nor dictate the exact manner in which defendants may do so. Instead, the claims seek to remedy the intentionally addic-

tive *design* of defendant platforms. *See Patterson* Reply Br. 3-4; *see also Salter* Reply Br. 25-26. Defendants are therefore free to publish any content (even hateful, extremist content), so long as they do not employ the same addictive user-interface features when doing so.

Given that any effect on defendants' speech would be purely incidental to remedying their platforms' defective design, the applicable level of scrutiny—to the extent any is warranted—is intermediate scrutiny. *See United States v. O'Brien*, 391 U.S. 367, 376-77 (1968) (applying intermediate scrutiny to regulation that incidentally burdens expressive conduct); *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (applying the same, for content-neutral time, place, manner restriction).

Under that standard, plaintiffs' claims amply pass constitutional muster. Indeed, defendants do not dispute that a significant state interest is at stake: the health and welfare of minors. Nor can they seriously contest that remedying their platforms' addictive design would directly advance this interest by reducing minors' exposure to highly addictive user-interface features. Finally, the Court can readily ensure (at the remedies stage), that any imposed

remedy—be it a design change or warning—is narrowly tailored to account for defendants’ asserted speech interests. *See Salter* Reply Br. 36-38 (discussing tailoring). Thus, even if the Court were to conclude that plaintiffs’ claims implicate the First Amendment, the Court should permit the claims to proceed beyond the motion to dismiss stage.

C. The Appellate Division’s Decision Effectively Immunizes Social Media Platforms from Liability for Harms Caused by Addictive Features.

The Appellate Division’s application of Section 230 and the First Amendment is not only legally erroneous, but also potentially fatal to any attempt to hold social media companies accountable for intentionally designing (and failing to warn about) their addictive platforms. As the majority declared: “the interplay between section 230 and the First Amendment gives rise to a ‘Heads I Win, Tails You Lose’ proposition in favor of the social media defendants.” (R.6621.) The platforms are either “immune from civil liability under section 230 on the theory that” they are acting “as publishers of third-party content,” or they “are protected by the First Amendment on the theory that [their] algorithms create first-party content.”

(R.6621.) “Under no circumstances are they protected by neither.”

(R.6621.)

Left uncorrected, this sweeping holding could jeopardize the State’s ongoing efforts to combat the public health crisis caused by social media addiction. For example, the New York Attorney General is currently suing Meta and TikTok over their design and deployment of features such as user-based content-recommendation algorithms, infinite scroll, and notifications—the same features that are at issue in this lawsuit.⁸ If the courts presiding over those cases

⁸ See Compl. at 12-21 (¶¶ 65-111), 77-71 (¶¶ 324-350), *People v. TikTok Inc.*, No. 452749/2024 (Sup. Ct. New York County Oct. 7, 2024), NYSCEF No. 3; Am. Compl. at 19-22 (¶¶ 86-116), 140-141 (¶¶ 847-850), *In re Social Media Adolescent Addiction/Personal Injury Litig. (California v. Meta Platforms, Inc.)*, No. 4:23-cv-05448 (N.D. Cal. June 9, 2025), ECF No. 207.

In *People v. TikTok Inc.*, the trial court denied TikTok’s motion to dismiss the State’s products liability claims on the grounds that they are barred by Section 230 and the First Amendment. See Decision & Order on Mot. (May 29, 2025), No. 452749/2024, NYSCEF No. 128; Tr. at 68-70 (May 28, 2025), *id.*, NYSCEF No. 133. TikTok’s fully briefed appeal is pending before the First Department. See *People v. TikTok Inc.*, No. 2025-04146.

In *California v. Meta Platforms, Inc.*, New York joined twenty-eight other States in suing Meta over the addictive design of Facebook and Instagram. The trial court recently denied defendants’ motion for summary judgment (see Order at 1, *California v. Meta Platforms*,

(continued on next page)

adopt the Appellate Division’s position, the continued viability of the State’s enforcement actions could be fundamentally called into question.

The decision below also undermines the State’s ability to combat social media addiction through regulation. In December 2024, the Legislature passed the Safe for Kids Act, which requires social media companies to obtain parental consent before they can provide minors with an “addictive feed”—i.e., a feed that “recommend[s], select[s], or prioritize[s] for display” media based on “information associated with the user or the user’s device.” *See* General Business Law (G.B.L.) §§ 1500(1), 1501(1). The Attorney General recently promulgated regulations to implement the law, *see* 13 N.Y.C.R.R. pt. 700, which will go into effect in January 2027, *see* G.B.L. §§ 1501(4), 1508(1). Additionally, the Governor recently signed into law legislation requiring social media platforms with features such as addictive feeds, autoplay, or infinite scroll to post warning labels on their platforms. *See* Ch. 689, 2026 N.Y. Laws. The Appellate Divi-

Inc., No. 4:23-cv-05448 (N.D. Cal. June 29, 2026), ECF No. 440), and a jury trial is currently set for August 2026 (*see id.*, ECF No. 450).

sion’s erroneous reasoning, if allowed to stand, could threaten the viability of these important regulatory safeguards for minors, and potentially foreclose *any* regulation of social media platforms to protect user-safety.⁹

POINT II

SOCIAL MEDIA PLATFORMS CAN BE PROPERLY SUBJECT TO PRODUCTS LIABILITY CLAIMS UNDER NEW YORK LAW

Although the Appellate Division did not decide whether defendant platforms qualify as products under New York law (*see* R.6618), if this Court reaches the issue, the Court should make clear that social media platforms *can* be subject to design-defect and failure-to-warn claims based on their addictive features. Defendants are wrong in contending that they are exempt from such claims

⁹ The same reasoning also could jeopardize legislative efforts to combat the harms posed by generative artificial intelligence (AI). The Legislature recently passed a bill prohibiting AI chatbot operators from offering certain “unsafe” chatbot features to minors, including suggesting that the chatbot is real and generating sexually explicit outputs. *See* 2026 N.Y. Senate Bill S9051B; 2026 N.Y. Assembly Bill A10379C.

simply because their platforms “present a distinct mix of *intangible speech* to every user.” Defs.’ Br. 91.

As an initial matter, defendants misplace their reliance on cases that hold “intangible thoughts, ideas, and expressive content are not products.” *See id.* at 93 (quotation marks omitted); *see also id.* at 93-94 (collecting cases). These cases have no application where, as here, plaintiffs challenge defendant platforms’ addictive algorithmic *design*, and not their “publication of objectionable content,” *id.* at 92. *See New Hampshire v. TikTok Inc.*, No. 217-2024-CV-00399, 2025 WL 2079814, at *20 (N.H. Super. Ct. July 8, 2025) (rejecting similar argument).

More fundamentally, this Court has cautioned against imposing any bright-line rules for what constitutes a product under New York law. *See Matter of Eighth Jud. Dist. Asbestos Litig.*, 33 N.Y.3d 488, 494 (2019) (“*Terwilliger*”). Courts must instead examine—on a case-by-case basis—whether something qualifies by applying the definition and factors set forth in the *Restatement (Third) of Torts: Products Liability*. *See id.* Under the Third Restatement, a product is generally “tangible personal property distributed commercially for use or

consumption.” *Restatement (Third) of Torts: Products Liability* § 19(a) (June 2026 update) (Westlaw). But intangible items, too, may qualify “when the context of their distribution and use is sufficiently analogous to [that] of tangible personal property.” *Id.*

Critically, this Court has underscored that, for “design and warning cases,” like this one, “the practical importance of whether something is, or is not, a product has diminished somewhat.” *Terwilliger*, 33 N.Y.3d at 495 (quoting *Restatement (Third) of Torts*, § 19 cmt. a). The Court’s “overarching concern” is instead to “settle upon the most reasonable allocation of risks, burdens and costs among the parties and within society.” *Id.* (citing *Matter of New York City Asbestos Litig.*, 27 N.Y.3d 765, 788 (2016) (“*Dummitt*”).

This Court has, accordingly, placed great weight on considerations such as the “defendant’s control over the design of the product” and its “superior ability to know—and warn about—the dangers.” *Id.* at 496 (citing *Dummitt*, 27 N.Y.3d at 793, 800-01). Other relevant considerations include “the public interest in life and health”; “the justice of imposing the loss on the manufacturer who created the risk and reaped the profit”; and “the disparity in

position and bargaining power.” *See Restatement (Third) of Torts* § 19, Reporters’ Note, cmt. a.

Defendants fail to meaningfully grapple with any of these considerations. *See* Defs.’ Br. 90-98. For good reason: as plaintiffs explain, defendants design, market, distribute, and profit from their platforms, just like any tangible product. *See Patterson* Br. 24-26 (pointing to specific allegations); *Patterson* Reply Br. 26-28. The applicable policy considerations likewise weigh decisively in favor of subjecting defendants to strict products liability. According to plaintiffs, defendants intentionally designed their platforms to be addictive for young users. *Patterson* Br. 25; *Salter* Br. 12-14. Defendants are therefore best positioned to know about, and warn about, the dangers of their platforms. Finally, the disparity in bargaining power here between defendant platforms and their users is insuperable: young consumers lack the ability to compel meaningful change by quitting the platforms precisely because they are addicted by the challenged design features. There is thus no injustice at all in allocating the “risks, burdens and costs” onto defendants here. *See Terwilliger*, 33 N.Y.3d at 495 (quotation marks omitted).

Defendants’ contrary arguments wholly miss the mark. *First*, defendants err in suggesting that their platforms “are not sufficiently uniform or standardized for strict product liability to apply” because “they offer a user-specific mix of content.” *See* Defs.’ Br. 95. Although users can view different content on the platforms, the alleged defects they encounter—i.e., addictive features such as autoplay, infinite scroll, and notifications—are the same across all versions of a given platform. *See Patterson* Reply Br. 27-28 (citing specific allegations).

Second, defendants are further incorrect in asserting that their platforms do not qualify as products because they are supposedly “online services.” *See* Defs.’ Br. 91, 96. Numerous courts have held (or at least assumed as obvious) that online platforms *do* qualify as products where, as here, the alleged harms stem from the platforms’ defective *design*, and not their recommendation of, or failure to screen, particular content. *See New Hampshire v. TikTok Inc.*, 2025 WL 2079814, at *3-5, *20 (state enforcement action asserting product liability claims against TikTok’s addictive features); *In re Social Media Adolescent Addiction / Personal Injury Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 849-50 (N.D. Cal. 2023) (federal multi-district litiga-

tion asserting products liability claims against multiple social media platforms).¹⁰

Defendants’ cited cases lend no support to their contrary position. *See* Defs.’ Br. 96. In *Grossman v. Rockaway Township*, for example, the court did not even “reach a definitive conclusion about whether Snap[chat] qualifies as a product.” No. MRS-L-1173-18, 2019 WL 2649153, at *16 (N.J. Super. Ct. Law Div. June 10, 2019). The remaining cases defendants cite are similarly inapposite or unpersuasive. In *Jacobs v. Meta Platforms, Inc.*, the court concluded that the plaintiffs’ theory of liability treated Facebook as a service because plaintiffs sought to hold Facebook responsible for “connect[ing]” the individuals who murdered their family member. *See* No. 22CV005233, 2023 WL 2655586, at *1-2, *4 (Cal. Super. Ct. Mar. 10, 2023). And the other cases summarily declared that only

¹⁰ *See also, e.g., In re Uber Techs., Inc., Passenger Sexual Assault Litig.*, 745 F. Supp. 3d 869, 905 (N.D. Cal. 2024); *Brooks v. Lyft Inc.*, No. 50-2019-CA-004782, 2022 WL 19799628, at *3 (Fla. Cir. Ct. Sept. 30, 2022); *cf. Lemmon*, 995 F.3d at 1087 (assuming as obvious Snapchat is a product); *Maynard v. Snapchat, Inc.*, 313 Ga. 533, 539-40 (2022) (same); *A.M. v. Omegle.com, LLC*, 614 F. Supp. 3d 814, 817, 823 (D. Or. 2022) (same, for Omegle chat platform).

tangible objects qualify as products, *see Ziencik v. Snap*, No. CV-21-7292, 2023 WL 2638314, at *4 (C.D. Cal. Feb. 3, 2023), or that “[t]he interactions between” social media platforms and users “are different from typical product sales,” *Social Media Cases*, 2023 WL 6847378, at *16—propositions that have no basis in New York law.

Finally, even if some tangible referent were required for social media platforms to be considered a product, there are numerous relevant analogs here. Televisions, iPods, Kindles, and radios are all indisputably products even though they, too, present users with “intangible speech,” Defs.’ Br. 91 (emphasis omitted). Moreover, defendant platforms’ addictive features are readily analogizable to tangible personal property in their distribution and use.

As plaintiffs have explained (*see Salter* Br. 12), defendants’ engagement-driven algorithms, in conjunction with features such as autoplay and infinite scroll, render their platforms addictive, just like a slot machine: both employ the same variable rewards design to addict users. Defendants’ push notifications, moreover, are akin to a pager: both use audio and visual cues to alert users of missed activity. Thus, even if this Court were to require a feature-by-feature

analog, *see In re Social Media Adolescent Addiction*, 702 F. Supp. 3d at 841, 849 (applying this approach), the examples here fatally undermine defendants’ assertion that their platforms do not qualify as products as a matter of New York law.

CONCLUSION

This Court should reverse the Appellate Division’s judgment dismissing plaintiffs’ complaints.

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July 30, 2026

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AFFIRMATION OF COMPLIANCE

Pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.) § 500.13(c)(1), Grace X. Zhou, an attorney in the Office of the Attorney General of the State of New York, hereby affirms that according to the word count feature of the word processing program used to prepare this brief, the brief contains 6,902 words, which complies with the limitations stated in § 500.13(c)(1).

/s/ Grace X. Zhou
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