

SJC-12946

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COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

ATTORNEY GENERAL MAURA HEALEY, Petitioner-Appellee,

v.

FACEBOOK, INC., Defendant-Appellant.

On Appeal from an Order of the Superior Court for Suffolk County

**BRIEF OF *AMICUS CURIAE* COMMON SENSE MEDIA IN SUPPORT OF  
PETITIONER-APPELLEE ATTORNEY GENERAL MAURA HEALEY**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 17(c)(1) and SJC Rule 1:21, amicus curiae Common Sense Media certifies that it has no parent corporation and no publicly held corporation owns 10% or more of its stock.

## **PREPARATION OF AMICUS BRIEF DECLARATION**

Pursuant to Appellate Rule 17(c)(5), amicus declares that:

- (a) No party or party's counsel authored this brief in whole or in part;
- (b) No party or party's counsel contributed money to fund preparing or submitting the brief;
- (c) No person or entity other than the amicus curiae contributed money that was intended to fund preparing or submitting a brief; and
- (d) Counsel has not represented any party in this case or in proceedings involving similar issues, or any party in a case or legal transaction at issue in the present appeal.

## INTEREST OF THE AMICUS CURIAE<sup>1</sup>

Common Sense Media is a leading organization dedicated to helping kids and families thrive in a rapidly changing digital world. We are nonprofit, nonpartisan, and independent. Common Sense offers age-appropriate family media ratings and reviews, a digital citizenship curriculum for use in schools, and research reports that advance discussions about how media and technology impact kids today. Common Sense also elevates the needs of children and families in state and federal public policy, educating legislators across the country about children's unique vulnerabilities online. Alone and with other advocates, Common Sense has repeatedly asked the Federal Trade Commission ("FTC") to investigate Facebook's treatment of young people. One request, filed on behalf of numerous groups, concerned Facebook's apparent manipulation of minors to make unauthorized and unknowing credit card purchases for games on Facebook's platform.<sup>2</sup> Common Sense also joined other consumer and privacy advocates to object to the FTC's

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<sup>1</sup> Common Sense Media legal intern Madison Flowers assisted in the preparation of this brief.

<sup>2</sup> Letter from Common Sense Media to Donald S. Clark, Secretary of the FTC and Andrew Smith, Director of the Bureau of Consumer Protection (Feb. 21, 2019), <https://www.commonsensemedia.org/sites/default/files/uploads/facebook-federal-trade-commission-letter.pdf>.

most recent settlement with Facebook as insufficient to address privacy shortcomings at the company.<sup>3</sup>

*Amicus* writes to assist the Supreme Judicial Court by providing important context about defendant-appellant's ongoing failure to monitor third-party app developers and Facebook's repeated history of non-transparency and neglect with respect to the well-being of young people. Common Sense recognizes that regulators' efforts to protect consumers in the technology space are critical. Common Sense has long supported the efforts of state consumer protections officials such as the Massachusetts Attorney General to protect the privacy interests of kids and families online. The Massachusetts Attorney General has provided necessary support in protecting online privacy, and the information provided through administrative subpoenas, or civil investigative demands, are crucial to the Attorney General's ability to protect consumers and hold sophisticated data-driven companies like Facebook accountable for their data practices.<sup>4</sup> Given the complexity of the online ecosystem, particularly for

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<sup>3</sup> Brief for Common Sense Media et al. as Amici Curiae Supporting Neither Party, *United States of America v. Facebook, Inc.*, 456 F. Supp. 3d 115 (2020), <https://epic.org/privacy/facebook/epic2019-challenge/US-v-Facebook-25-Public-Citizen-Amicus-Brief.pdf>.

<sup>4</sup> Danielle K. Citron, *The Privacy Policymaking of State Attorneys General*, 92 NOTRE DAME L. REV. 747 (2017).



consumers and young people, the ability of regulators to understand company business practices and enforce real consumer protections is essential.

## ARGUMENT

In March 2018, Facebook suspended Strategic Communication Laboratories (SCL) and its political data analytics firm, Cambridge Analytica, after public reports that the SCL had taken the personal data of millions of Facebook users to create profiles for targeted political advertisements.<sup>5</sup> The Cambridge Analytica data leak revealed serious lapses in Facebook’s stated commitment to protect its user privacy. This culminated in Facebook agreeing to a revised settlement with the FTC in 2019 because its ongoing privacy practices and use of personal data, including the Cambridge Analytica data leak, violated a prior 2012 FTC consent order. This settlement also included a \$5 billion fine. *United States v. Facebook*, Case No. 19-cv-2184 (D.D.C. July 24, 2019) (stipulated order for civil penalty, monetary judgment, and injunctive relief) (“2019 Order”).

While the 2019 Order represented new promises to the FTC by Facebook, nothing in those promises abrogates the need for consumer protection enforcement agencies like the Massachusetts Attorney General to monitor and police Facebook’s privacy practices. Indeed, the 2019 Order itself demonstrates that Facebook did not comply with the terms of its first 2012 consent order, and more oversight is necessary. The case at hand represents an effort by the Massachusetts

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<sup>5</sup> Facebook, *Suspending Cambridge Analytica and SCL Group from Facebook* (Mar. 16, 2018), <https://about.fb.com/news/2018/03/suspending-cambridge-analytica/>.

Attorney General to engage in such oversight, specifically with respect to Facebook’s App Developer Investigation (“ADI”).

Facebook announced it was investigating apps in 2018. As part of Facebook’s 2012 settlement with the FTC, Facebook had been required to obtain express consent before sharing personal information beyond a user’s privacy settings (including with app developers), maintain a comprehensive privacy program, and obtain independent biennial privacy audits. (Facebook, Inc., No. C-4365, 2012 FTC LEXIS 135 (F.T.C. July 27, 2012) (decision and order)) (“2012 Order”). Prior to the 2019 Order and at the same time Facebook announced the suspension of SCL in 2018, Facebook announced its investigation program and explained that it had made “significant improvements in [its] ability to detect and prevent violations by app developers” since 2013.<sup>6</sup> Yet since launching the ADI program and despite new public commitments, Facebook continues to show both poor judgement and a failure to adequately monitor its own data collection, use, and sharing practices, particularly with respect to its youngest users.

Like the federal FTC Act, Section 2 of G.L. c. 93A prohibits the commission of any “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce,” G.L. c. 93A, § 2; which is enforced by the Massachusetts Attorney General. G.L. c. 93A, § 6, authorizes the Massachusetts

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<sup>6</sup> *Id.*

Attorney General to “examine or cause to be examined any documentary material of whatever nature relevant to such alleged unlawful method, act or practice.” G.L. c. 93A, § 6(1). The instant case involves Facebook’s efforts to shield from regulators information about its ADI Recipients of a civil investigative demand by the Attorney General bear a “heavy burden” to show that the information being requested is “plainly irrelevant” to an inquiry into the company’s business practices. *Harmon Law Offices, P.C. v. Attorney General*, 83 Mass. App. Ct. 830, 834-835 (2013). Facebook is now asserting attorney-client privilege over information that is relevant to the company’s privacy practices; more important, as the lower court found, Facebook’s “broad assertion of the attorney-client privilege with respect to the inner-workings of the ADI also is at odds with how the Company has portrayed the ADI publicly.” *Attorney General v. Facebook, Inc.*, No. 1984CV02597BLS1, 2020 WL 742136, at \*12 (Mass. Super. Ct. Jan. 17, 2020). For the reasons elaborated upon below, *amicus* supports the Attorney General’s investigation into Facebook and urges the Court to consider Facebook’s pattern of problematic behaviors.

**I. The public has yet to learn the effectiveness of Facebook’s App Developer Investigation and Facebook has a history of poor oversight of app developers.**

Facebook and the company’s leadership has repeatedly promised to do a better job at protecting privacy,<sup>7</sup> but these assertions are not supported by any information the public or experts can assess. Petitioner-appellee’s current investigation provides an illustrative example. In response to its suspension of SCL in 2018, Facebook launched what it refers to as its App Developer Investigation (“ADI”), with the goal of investigating and auditing third-party apps on its platform. Since Facebook made this announcement two years ago, it has provided a few intermittent updates to the public about the program.<sup>8</sup> *Attorney General v. Facebook, Inc.*, No. 1984CV02597BLS1, 2020 WL 742136, at \*4 (Mass. Super. Ct. Jan. 17, 2020). In its last update in September 2019, Facebook asserted that its work “is by no means finished” but the “investigation has addressed millions of

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<sup>7</sup> Jessi Hempel, *A Short History of Facebook’s Privacy Gaffes*, WIRED (Mar. 30, 2018, 7:00 AM), <https://www.wired.com/story/facebook-a-history-of-mark-zuckerberg-apologizing/>; see also Zeynep Tufekci, *Why Zuckerberg’s 14-Year Apology Tour Hasn’t Fixed Facebook*, WIRED (Apr. 6, 2018, 3:32 PM), <https://www.wired.com/story/why-zuckerberg-15-year-apology-tour-hasnt-fixed-facebook/>.

<sup>8</sup> *Attorney General v. Facebook, Inc.*, No. 1984CV02597BLS1, 2020 WL 742136, at \*4 (Mass. Super. Ct. Jan. 17, 2020).

apps. Of those, tens of thousands have been suspended.”<sup>9</sup> Facebook did not disclose what these apps did with user data or which apps were suspended. Petitioner-appellee has brought suit against Facebook in part to better understand “the nature and workings of Facebook’s ADI.”<sup>10</sup> Since September 2019, Facebook has provided the public with no further updates about the efficacy of the ADI program.

Understanding how Facebook monitors app developers on its platform is an important privacy protection because online platforms serve as digital gatekeepers.<sup>11</sup> However, platforms often fail in their responsibility to protect their users’ privacy, shifting liability and accountability for privacy violations to developers. For instance, online platforms repeatedly fail to ensure that third parties comply with the Children’s Online Privacy Protection Act (“COPPA”), which requires safeguards for information collected from children under the age of 13. 15 U.S.C. § 6502. Sweeps of online app stores have found that kids and teens app developers failed to provide required transparency about their data practices,<sup>12</sup>

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<sup>9</sup> Facebook, *An Update on Our App Developer Investigations* (Sep. 20, 2019), <https://about.fb.com/news/2019/09/an-update-on-our-app-developer-investigation/>.

<sup>10</sup> *Facebook*, 2020 WL 742136, at \*5

<sup>11</sup> Damien Geradin, *What is a Digital Gatekeeper?*, THE PLATFORM LAW BLOG (Oct. 5, 2020), <https://theplatformlaw.blog/2020/10/05/what-is-a-digital-gatekeeper/>.

<sup>12</sup> Bryan Clark, *Millions of Apps Could Soon Be Purged From Google Play Store*, TNW (Feb. 8, 2017), <https://thenextweb.com/google/2017/02/08/millions-apps->

engage in unnecessary and aggressive data collection and processing,<sup>13</sup> and otherwise attempt to manipulate, profile and extract money from youngsters online.<sup>14</sup> Indeed, Facebook’s own history with platform games, minors, and in-app purchases fits this pattern. *See* discussion in Section II. Hundreds of companies develop products specifically to “monetize children,” and regulators including Attorneys General are increasingly concerned about the failures of developers, advertisers, and ultimately platforms to protect children’s privacy. *See Balderas v. Tiny Lab Productions et al*, Case No. 1:2018cv0085 (D.N.M. Apr. 29, 2020) (complaint).

The results of Facebook’s ADI are a matter of public concern. In response to the Cambridge Analytica scandal and the 2019 Order, Facebook introduced changes to how Facebook manages and holds third parties accountable for

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soon-purged-google-play-store/; Common Sense Media, 2019 State of EdTech Privacy Report, 1, 17 (2019).

<sup>13</sup> Irwin Reyes et al., “Won’t Somebody Think of the Children?” Examining COPPA Compliance at Scale, 2018 PROC. PRIVACY ENHANCING TECHS. 63 (2018), <https://petsymposium.org/2018/files/papers/issue3/popets-2018-0021.pdf>; Quentin Palfrey et al., *Privacy Considerations as Schools and Parents Expand Utilization of Ed Tech Apps During the COVID-19 Pandemic*, INTERNATIONAL DIGITAL ACCOUNTABILITY COUNCIL (Sep. 1, 2020), <https://digitalwatchdog.org/wp-content/uploads/2020/09/IDAC-Ed-Tech-Report-912020.pdf>.

<sup>14</sup> BBB NATIONAL PROGRAMS, RISKY BUSINESS: THE CURRENT STATE OF TEEN PRIVACY IN THE ANDROID APP MARKETPLACE, <https://bbbprograms.org/Risky-Business-Teen-Privacy>.

managing data obtained from its platform.<sup>15</sup> It announced the ADI and established an App Review process, a manual process where Facebook claims to review the use of certain application programming interfaces (APIs) to ensure developer's comply with Facebook's policies.<sup>16</sup> It has further promoted a developer-initiated "Data Use Checkup" that developer's must undergo annually to verify their API access and data use comply with the Facebook Platform Policy.<sup>17</sup> However, Facebook has provided limited details about these processes and reviews.

Past experience shows that Facebook's processes with respect to third parties cannot be fully trusted. For example, on July 1, 2020, Facebook disclosed that, "from the last several months we have available," approximately 5,000 developers continued to improperly receive data from users who had been inactive for months. This was in direct contradiction to a policy Facebook announced in 2018 to "automatically expire an app's ability to receive any updates to this information if our systems didn't recognize a person as having used the app within

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<sup>15</sup> Konstantinos Papamiltiadis, *Introducing Early Testing of Data Use Checkup*, FACEBOOK FOR DEVELOPERS (Apr. 8, 2020), <https://developers.facebook.com/blog/post/2020/04/08/introducing-early-testing-data-use-checkup/>.

<sup>16</sup> FACEBOOK FOR DEVELOPERS, APP REVIEW, <https://developers.facebook.com/docs/app-review>.

<sup>17</sup> Papamiltiadis, *supra* note 15. Facebook has expanded the use of "Data Use Checkups" to its Oculus virtual reality platform, further placing the onus on third parties to meet Facebook's responsibilities to protect user privacy. *See* Oculus VR, *Introducing Oculus Data Checkup*, OCULUS DEVELOPER BLOG (Sep. 10, 2020), <https://developer.oculus.com/blog/introducing-oculus-data-use-checkup/>.



the last 90 days.”<sup>18</sup> Facebook did not offer an apology in disclosing this or any recompense to those whose privacy was violated. Facebook also failed to live up to expectations -- and European privacy law -- in December 2018, when it experienced another significant data breach.<sup>19</sup> At least 6.8 million user’s private photos were improperly accessed, and Facebook did not notify the data protection authorities for at least two months, in violation of the GDPR rule that notification must happen within 72 hours.<sup>20</sup> Facebook offered only an apology, with no compensation for the victims of the security breach or any plan of action for how to prevent future breaches.<sup>21</sup> Given these repeated violations, the public and especially regulators deserve to better understand how Facebook is approaching privacy and complying with the law.

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<sup>18</sup> Konstantinos Papamiltiadis, *Improving Data Limits for Infrequently Used Apps, Simplifying Platform Terms and Developer Policies*, FACEBOOK FOR DEVELOPERS (July 1, 2020), <https://about.fb.com/news/2020/07/improving-data-limits-simplifying-terms/>; see also Sarah Perez, *Facebook Discovers It Shared User Data With At Least 5,000 App Developers After a Cutoff Date*, TECH CRUNCH (July 2, 2020, 10:47 AM), <https://techcrunch.com/2020/07/02/>.

[facebook-discovers-it-shared-user-data-with-at-least-5000-app-developers-after-a-cutoff-data/](https://techcrunch.com/2020/07/02/facebook-discovers-it-shared-user-data-with-at-least-5000-app-developers-after-a-cutoff-data/).

<sup>19</sup> Kalev Leetaru, *Facebook’s Latest Breach Illustrates The Limits Of GDPR*, FORBES (Dec. 14, 2018, 3:52 PM), <https://www.forbes.com/sites/kalevleetaru/2018/12/14/facebooks-latest-breach-illustrates-the-limits-of-gdpr/#775b8a8674a5>.

<sup>20</sup> *Id.*

<sup>21</sup> Tomer Bar, *Notifying Our Developer Ecosystem About a Photo API Bug*, FACEBOOK FOR DEVELOPERS (Dec. 14, 2018), <https://developers.facebook.com/blog/post/2018/12/14/notifying-our-developer-ecosystem-about-a-photo-api-bug/>.

**II. Facebook’s internal privacy program and review processes have not stopped the company from engaging in problematic practices involving teens and teens’ data, including with third-party apps.**

Facebook’s own practices and those it encouraged among third-party app developers demonstrate the company’s ongoing commitment to protecting its youngest users. Prior to the revelation that Cambridge Analytica was able to use data obtained from Facebook to profile its users, Facebook itself had engaged in experimentation on its users. In 2012, researchers showed that Facebook could increase voter turnout by including messages in user News Feeds that indicated their Facebook friends had voted.<sup>22</sup> While this experiment was covered in a positive light, it highlights Facebook’s ability to manipulate its own users. In 2014, Facebook announced its internal researchers had conducted a large-scale experiment that sought to learn how posts could affect user sentiment by tweaking the amount of positive or negative comments on their News Feeds.<sup>23</sup> For one week in January 2012, Facebook researchers had skewed what approximately 700,000 users saw on their News Feeds. Some were shown content with additional happy

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<sup>22</sup> Zoe Corbyn, *Facebook Experiment Boosts US Voter Turnout*, NATURE NEWS (Sep. 12, 2012), <https://www.nature.com/news/facebook-experiment-boosts-us-voter-turnout-1.11401>.

<sup>23</sup> Adam D. I. Kramer, Jamie E. Guillory & Jeffrey T. Hancock, *Experimental Evidence of Massive-Scale Emotional Contagion Through Social Networks*, 24 PROC. NAT’L ACAD. SCI. (June 17, 2014), <http://www.pnas.org/content/111/24/8788.full.pdf>.

and positive words, while others were shown content analyzed as sadder than average. Manipulated users were more likely to post either positive or negative words about themselves. Facebook may present experimentation of users as a potential benefit, but it extracts value to Facebook at the expense of its users emotional well-being.

Academic researchers and legal scholars questioned the ethics of Facebook's user sentiment experimentation.<sup>24</sup> Facebook responded in October 2014 by announcing new guidelines, review processes, training, and enhanced transparency for research projects. Importantly, Facebook's Chief Technology Officer explained that "[i]f proposed work is focused on studying particular groups or populations (such as people of a certain age) or if it relates to content that may be considered deeply personal (such as emotions) it will go through an enhanced review process before research can begin."<sup>25</sup>

And yet, despite these new review processes, Facebook admitted that it analyzed the emotions of teenagers in explicit violation of Facebook policy. In 2017, internal research documents showed how Facebook could classify users as

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<sup>24</sup> James Grimmelman, "The Law and Ethics of Experiments on Social Media Users," 13 COLO. TECH. L.J. 219 (2015).

<sup>25</sup> Mike Schroepfer, Research at Facebook, FACEBOOK NEWSROOM (Oct. 2, 2014), <http://newsroom.fb.com/news/2014/10/research-at-facebook>.

feeling “stressed,” “anxious,” “nervous” or other negative emotions.<sup>26</sup> This information was then shared with potential advertisers to pitch Facebook’s capacity to target teenagers “when they are potentially more vulnerable.”<sup>27</sup>

Facebook has also previously taken advantage of young users on its own platform and through the third-party game apps it allows users to play. In 2019, Common Sense Media led a coalition of privacy, technology, parent, and consumer advocacy organizations to call on the FTC to investigate Facebook for employing unfair and deceptive practices by charging children for purchases made without parental consent and often without parental awareness. Internal documents revealed that Facebook knowingly duped children into making in-game purchases and made refunds difficult to obtain. Facebook employees called the practice “friendly fraud” and referred to kids who spent large amounts of money as “whales,” a casino-industry term for super high rollers.<sup>28</sup> Internal documents showed that Facebook was aware that games on its platform were popular with children as young as five, raising serious issues with the company’s compliance with COPPA. This information only came to light after a court granted a request

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<sup>26</sup> Lucy Handley, *Facebook Criticized For Analyzing Teenagers’ Feelings, Accused of Providing Information to Advertiser*, CNBC (May 2, 2017, 7:56 AM), <https://www.cnbc.com/2017/05/02/facebook-criticized-for-analyzing-teenagers-feelings-emotions.html>.

<sup>27</sup> *Id.*

<sup>28</sup> Letter from Common Sense Media, *supra* note 2.

from the Center for Investigative Reporting to unseal documents from a class action lawsuit brought in 2012. *IB v. Facebook*, No. 12-1894 (N.D. Cal. May 26, 2016).

In light of Facebook’s own failures to follow through with publicly announced child and family-friendly policies, and its lax oversight of third-party developers, defendant-appellant’s oversight of third parties and its management of the ADI warrants special scrutiny by regulators

### **III. Facebook as a third-party app has itself taken advantage of minors in violation of other platforms’ policies.**

Facebook itself has failed to follow the developer terms it has agreed to with other platforms. For years, Facebook collected data through an app known as Onavo. Onavo offered users the ability to create a virtual private network (“VPN”) that the app advertised as a method for users to “keep you and your data safe.”<sup>29</sup> While VPNs can be a useful method to disguise internet traffic, they can also be used to observe and monetize users’ web browsing and app usage activity. Onavo

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<sup>29</sup> Deepa Seetharaman, *Facebook Removes Data-Security App From Apple Store*, WALL STREET JOURNAL (Aug. 22, 2018, 8:26 PM), <https://www.wsj.com/articles/facebook-to-remove-data-security-app-from-apple-store-1534975340>.

gave Facebook a method of collecting and analyzing users' activity on the Android and iOS mobile ecosystems outside of the usual Facebook app.<sup>30</sup>

In 2018, Apple instituted changes to its developer terms on the iOS App Store, requiring apps to not collect information about other on-device apps “for the purposes of analytics or advertising/marketing” and that apps “must make it clear what user data will be collected and how it will be used.”<sup>31</sup> Facebook subsequently removed Onavo from the iOS App Store, but then sidestepped the App Store entirely by paying users as young as 13 to install a similar “Facebook Research” VPN that obtained root access to all network traffic on a device for Facebook’s own market research.<sup>32</sup> This VPN took advantage of an enterprise program offered by Apple that was meant for Facebook employees, not members of the public. This use of Apple’s enterprise certificate program to exfiltrate user data for Facebook’s own interests not only took advantage of teenagers but, importantly, bypassed Apple’s own app review process and breached the developer terms that Facebook

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<sup>30</sup> This information informed, for example, Facebook’s decision to acquire Instagram in 2012.

<sup>31</sup> Harper Neidig, *Facebook Pulls Data Security App After Apple Warns of Privacy Concerns*, THE HILL (Aug. 23, 2018), <https://thehill.com/policy/technology/403253-facebook-pulls-data-security-app-after-apple-warns-of-privacy-concerns>.

<sup>32</sup> Josh Constine, *Facebook Pays Teens To Install VPN That Spies on Them*, TECH CRUNCH (Jan. 29, 2019, 6:36 PM), <https://techcrunch.com/2019/01/29/facebook-project-atlas>.

agreed to on iOS.<sup>33</sup> Once again, Facebook’s actions demonstrate the need for additional oversight.

## CONCLUSION

Facebook’s track record of violating its users’—including its youngest users’—privacy, failure to live up to its privacy promises, and failure both to monitor third-party app developers or clearly communicate its data handling and processing practices warrant investigation and oversight by the Massachusetts Attorney General. Litigation and enforcement efforts have proven important mechanisms for the public to understand Facebook’s pattern of misbehavior. While Facebook continually pledges to be more transparent about its privacy practices, the instant case highlights many unanswered questions that have emerged due to a lack of transparency by defendant-appellant.<sup>34</sup> Facebook’s own behaviors and its failure to provide public updates on the ADI demonstrate the need for further investigation into defendant-appellant’s privacy practices and its data sharing practices with third-parties. Rather than provide transparency or engage with the

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<sup>33</sup> Letter from Richard Blumenthal, United States Senate, Edward J. Markey, United States Senate, and Josh Hawley, United States Senate to Mark Zuckerberg, Chief Executive Officer, Facebook (Feb. 7, 2019), <https://www.blumenthal.senate.gov/imo/media/doc/Facebook%20Letter%20Regarding%20Project%20Atlas.pdf>.

<sup>34</sup> Sheera Frenkel & Matthew Rosenberg, *Facebook Sued by District of Columbia Over Cambridge Analytica*, N.Y. TIMES (Dec. 19, 2018), <https://www.nytimes.com/2018/12/19/technology/dc-sues-facebook-cambridge-analytica.html>.

Massachusetts Attorney General, Facebook has followed a pattern of stonewalling and denying access to information essential for consumer protection officials to protect privacy. For this and the foregoing reasons, *amicus* urges the Supreme Judicial Court to uphold the decision below.

Dated:

November 13, 2020

Respectfully submitted,

/s/ Joseph Jerome

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## CERTIFICATE OF COMPLIANCE

I, Joseph Jerome, hereby certify that the foregoing brief complies with all of the rules of court that pertain to the filing of briefs, including the requirements imposed by Rules 16, 17, and 20 of the Massachusetts Rules of Appellate Procedure. This brief complies with the applicable length limit in Rule 20 because it contains 3,381 words in 14-point Times New Roman font, as counted in Microsoft Word (version: Word for Mac, Version 16.16.26).

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## CERTIFICATE OF SERVICE

I, Joseph Jerome, hereby certify that a true copy of the above document, Motion for Leave to File a Brief of *Amicus Curiae* in Support of Petitioner-Appellant, Massachusetts Attorney General Maura Healey was served upon the following by causing it to be delivered by eFileMA.com to counsel of record for Petitioner-Appellee who are registered users of eFileMA.com:

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