No. 24-7032

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PEOPLE OF THE STATE OF CALIFORNIA ET AL.,
Plaintiffs-Appellees/Cross-Appellants,

v.

META PLATFORMS, INC. ET AL.,
Defendant-Appellants/Cross-Appellees.

On Appeal from the United States District Court
For the Northern District of California
Case No. 4:23-cv-05448 (MDL No. 3047)
The Honorable Yvonne Gonzalez Rogers

BRIEF OF VERMONT, NEW HAMPSHIRE AND NINE OTHER STATES AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLEES/CROSS-APPELLANTS AND IN SUPPORT OF AFFIRMANCE IN PART AND REVERSAL IN PART

Ryan D. Andrews
randrews@edelson.com
Roger Perlstadt
rperlstadt@edelson.com
EDELSON PC
350 North LaSalle Street,
14th Floor
Chicago, Illinois 60654
Tel: 312.589.6370

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

IDENTITY AND INTEREST OF AMICI

Vermont, New Hampshire, and the nine additional undersigned states (the "Amici States") submit this brief in support of Plaintiffs-Appellees/Cross-Appellants State of California et al. (the "State AGs"). The brief is submitted as of right pursuant to Fed. R. App. P. 29(a)(2). Each of the Amici States currently has cases pending against social media companies in their respective state courts that make social media addiction claims similar to the claims brought by the State AGs in the MDL here. An important issue in both the state court cases and the MDL is whether social media addiction claims are barred by the Communications Decency Act, 47 U.S.C. § 230 (the "CDA").

Although state courts are not bound by this Court's interpretation of the CDA, *see ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989), nor is this Court bound by state court CDA rulings, *see Spinner Corp. v. Princeville Dev. Corp.*, 849 F.2d 388, 390 n.2 (9th Cir. 1988), this Court may find state court decisions persuasive, and vice versa. Additionally, "uniformity is an important concern in federal statutory interpretation." *Minasyan v. Gonzales*, 401 F.3d 1069, 1076 (9th Cir. 2005). Accordingly, the Amici States submit this brief to inform the Court of state court

decisions in social media addiction cases, virtually all of which hold that the CDA does not bar such claims. *See Miller-Wohl Co. v. Comm'r of Lab. & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982) (noting that one "classic role of amicus curiae [is] assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration").

ARGUMENT

Two aspects of state court social media addiction litigation are particularly relevant here. First, at least eighteen state court decisions across fourteen states have held that social media addiction claims—including claims that defendants incorporated addictive design features into their platforms and that defendants deceived the public about the safety of their platforms—are not barred by the CDA. Second, multiple state appellate courts have declined to accept interlocutory review of decisions denying motions to dismiss social media addiction claims on CDA grounds, even where social media companies argue that the CDA immunizes them not just from ultimate liability but from even facing suit.

I. STATE COURTS HAVE NEAR-UNIVERSALLY HELD THAT SOCIAL MEDIA ADDICTION CLAIMS ARE NOT BARRED BY THE CDA.

Multiple state courts have ruled on motions to dismiss social media addiction claims brought by states against Meta and its peers, TikTok and Snap. Eighteen out of nineteen of those decisions have held that such claims—brought under various state consumer protection statutes and common law—are not barred by the CDA. *Arkansas v. Meta Platforms, Inc.*, No. 57CV-23-47, Slip Op. at 4–5 (Ark. Cir. Ct. June 13, 2024); *Arkansas v. TikTok Inc.*, No. 12CV-23-65, Slip Op. at 13–14 (Ark. Cir. Ct. May 15, 2024); *District of Columbia v. Meta Platforms, Inc.*, No. 2023-CAB-006550, 2023 WL 11921682, at *5–12 (D.C. Super. Ct. Sept. 9, 2024) ("*District v. Meta I*"); *District of Columbia v. TikTok Inc.*, No. 2024-CAB-006377, Slip Op., att. Tr. of Hr'g at 62–72 (D.C. Super. Ct. Feb. 28, 2025); *Illinois v. TikTok Inc.*, No. 2024CH09302, Slip Op. at 15–23 (Ill. Cir. Ct. June 12, 2025); *Massachusetts v. Meta Platforms, Inc.*, No. 23-2397-BLS1, Slip Op. at 6–18 (Mass. Super. Ct. Oct. 17, 2024); *Nevada v. TikTok Inc.*, No. A-24-886127-B, Tr. of Hr'g re: Mot. to Dismiss at 98:18–99:20 (Nev. Dist. Ct. Sept. 24, 2024); *New Hampshire v. Meta Platforms, Inc.*, No. 217-2023-

CV-00594, Slip Op. at 21–26 (N.H. Super. Ct. Dec. 10, 2024) ("*New Hampshire v. Meta I*"); *New Mexico v. Meta Platforms, Inc.*, No. D-101-CV-2023-02838, Slip Op. at 2 (N.M. Dist. Ct. June 21, 2024); *New Mexico v. Snap Inc.*, No. D-101-CV-2024-02131, Slip Op. at 3–4 (N.M. Dist. Ct. May 12, 2025); *New York v. TikTok Inc.*, No. 452749/24, Tr. of Hr'g at 63:16–68:19 (N.Y. May 28, 2025); *Oklahoma v. Meta Platforms, Inc.*, No. CJ-2023-180, Slip Op. at 5–6 (Okla. Dist. Ct. Nov. 20, 2024); *South Carolina v. TikTok Inc.*, No. 2024-CP-40-06018, Slip Op. at 10–12 (S.C. Cir. Ct. May 6, 2025); *Tennessee v. Meta Platforms, Inc.*, No. 23-1364-IV, Slip Op. at 16–23 (Tenn. Ch. Ct. Oct. 17, 2024); *Utah Div. of Consumer Prot. v. Meta Platforms, Inc.*, No. 230908060, 2024 WL 3741422, at *4–5 (Utah Dist. Ct. July 18, 2024) ("*Utah v. Meta I*"); *Utah Div. of Consumer Prot. v. TikTok Inc.*, No. 230907634, Slip Op. at 12–14 (Utah Dist. Ct. Nov. 12, 2024) ("*Utah v. TikTok I*"); *Vermont v. Meta Platforms, Inc.*, No. 23-CV-4453, 2024 WL 3741424, at *4–6 (Vt. Super. Ct. July 29, 2024) ("*Vermont v. Meta I*"); *Washington v. TikTok Inc.*, No.

24-2-23100-5 SEA, Tr. of Hr'g at 56:4–58:16 (Wa. Super. Ct. Mar. 28, 2025).[1]

The basis of the state court decisions finding that the CDA does not bar the states' social media addiction claims (many of which cite and apply this Court's precedents) is that the states' claims are not treating social media companies as the publisher or speaker of third-party content. Rather, the states are seeking to hold social media companies liable for their own conduct of incorporating addictive design features into their platforms and misrepresenting the safety of those platforms. As an Oklahoma court aptly summarized:

> Oklahoma is not attempting to hold Meta responsible for any third-party content in this suit.... Instead, it is seeking to hold Meta accountable for unlawfully designing its Platforms in a manner Meta knew to be harmful—for example, to induce compulsive use among adolescents in particular—and then presenting its Platforms as safe for adolescent use.

Oklahoma v. Meta, Slip Op. at 6 (footnote omitted); *see also Utah v. Meta I*, 2024 WL 3741422, at *4 ("Although Meta does disseminate

---

[1] The lone exception to state courts' otherwise uniform rulings that social media addiction claims are not barred by the CDA is *Oregon v. TikTok Inc.*, No. 24CV-48473 (Or. Cir. Ct. June 13, 2025). Even that case, however, held that some of the state's deception claims were not barred by the CDA. *Id.*, slip op. at 27–28, 30. Copies of all the state court opinions are included in the attached addendum as Exhibits 1–19.

third-party content, the Division's claims rest on the Defendants' own acts: their use of features and practices to target children into spending excessive amounts of time on their platforms and their misrepresentations about the safety of those platforms.").

These decisions recognize that states' claims that social media companies incorporated addictive design features into their platforms seek to hold them liable for their own conduct—not for third-party content—because the harm alleged is the addiction itself, not some other harm arising from any particular content. *See, e.g.*, *Vermont v. Meta I*, 2024 WL 3741424, at *5 ("The State alleges that the intentional *addictiveness* itself harms Young Users' mental health, separate and apart from the *content* of what they see."); *Arkansas v. Meta*, Slip Op. at 5 ("The State is not seeking to treat Meta as a publisher or speaker of information, rather it is alleging that the design features of Meta's platforms themselves are hazardous to adolescents because the features are designed to addict and exploit the frailties of developing brains."); *Massachusetts v. Meta*, Slip Op. at 13 ("The Commonwealth alleges physical and mental harm to young users from Instagram's design features *themselves*, which purportedly cause addictive use, and not

from the viewing of any specific third-party content[.]"). As the Vermont court explained, "[w]hether [young users] are watching porn or puppies, the claim is that they are harmed by the time spent, not by what they are seeing." *Vermont v. Meta I*, 2024 WL 3741424, at *5; *see also Massachusetts v. Meta*, Slip Op. at 13 ("[T]he alleged harm occurs regardless of the content that users see."); *New Hampshire v. Meta I*, Slip Op. at 25–26 ("[T]he State alleges that Meta's product design features, in and of themselves, are harmful to New Hampshire children regardless of the substance of the third-party content displayed."); *New York v. TikTok*, Tr. at 65:17 ("[T]he allegations are unrelated to third-party content on TikTok, but focus exclusively on the design feature of the application that leads to compulsive and excessive use.").[2]

The state court decisions likewise recognize that the states' deception claims are not seeking to treat social media companies as the publisher or speaker of third-party content. As an Arkansas court put

[2] The harms arising out of teen and other young users' excessive and compulsive use of social media include "lack of sleep and related health outcomes, diminished in-person socialization skills, difficulty maintaining attention, increased hyperactivity, self-control challenges, increased depression and anxiety, and interruption of various brain development processes." *Tennessee v. Meta*, Slip Op. at 19.

it, those claims are agnostic as to whether social media platforms contain harmful third-party content; they "demand[] only that [social media companies] be honest with consumers about what content the [platforms] contain[]." *Arkansas v. TikTok*, Slip Op. at 13; *see also Vermont v. Meta I*, 2024 WL 3741424, at *6 (claim that "Meta has failed to disclose to consumers its own internal research and findings about Instagram's harms to youth, including compulsive and excessive platform use" not barred by the CDA) (quotations omitted). As the District of Columbia court explained, such claims are not barred by the CDA because "Meta would not have to change the content it publishes or engage in any content moderation to avoid liability for future omissions claims." *District v. Meta I*, 2023 WL 11921682, at *11. "Rather, Meta can simply stop making affirmative misrepresentations about the nature of the third-party content it publishes, or it can disclose the material facts within its possession to ensure that its representations are not misleading or deceptive[.]" *Id.*; *see also New Hampshire v. Meta I*, Slip Op. at 26 ("These [deception] counts are not based on Meta's role as a publisher of third-party content. Rather, the

duty alleged to be breached arises out of Meta's knowledge that its products harm New Hampshire children.").

As these cases illustrate, the district court's determination that the bulk of the State AGs' addictive design features and deception claims are barred by the CDA is an outlier. Even those state courts addressing the issue after the district court's ruling have declined to follow it. *See, e.g.*, *District v. Meta I*, 2023 WL 11921682, at *9 ("This court respectfully declines to follow the decision of the judge in the multi-district litigation, as that decision is inconsistent with this court's reading of the case law and the purpose of the Section 230 immunity provisions."); *Vermont v. Meta I*, 2024 WL 3741424, at *5 (expressly declining to follow MDL district court opinion); *Massachusetts v. Meta*, Slip Op. at 13–14 ("I do not find [the MDL district court decision] persuasive as it pertains to [Instagram's addictive design] features[.]"). Indeed, one of the state court decisions declining to follow the MDL district court's opinion found it inconsistent with this Court's precedents. *New Hampshire v. Meta I*, Slip Op. at 25 (stating that it was following this Court's decisions in *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 736 (9th Cir. 2024); *Lemmon v. Snap, Inc.*, 995 F.3d 1085,

1092–93 (9th Cir. 2021); and *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 853 (9th Cir. 2016), rather than the MDL district court's decision).

As eighteen state courts across fourteen states have done, this Court, too, should hold that the State AGs' social media addiction claims are not barred by the CDA.

II. STATE APPELLATE COURTS ROUTINELY DECLINE TO TAKE INTERLOCUTORY REVIEW OF DENIALS OF MOTIONS TO DISMISS BASED ON THE CDA.

In addition to state trial courts refusing to dismiss social media addiction claims as barred by the CDA, state appellate courts routinely decline to take interlocutory review of those decisions. When seeking immediate review in the state courts, Meta and TikTok have made the same "immunity from suit" argument that Meta makes here. *See, e.g.*, Meta Platforms, Inc. and Instagram, LLC's Mot. for Permission to Appeal Pursuant to V.R.A.P. 5(b)(7)(A) at 16, *Vermont v. Meta Platforms, Inc.*, No. 24-AP-295 (Vt. Oct. 28, 2024) ("*Vermont v. Meta II*") ("An immediate appeal of the superior court's Section 230 ruling is necessary to protect Meta's statutory immunity from suit."); Rule 7 Notice of Discretionary Appeal at 11, *New Hampshire v. Meta Platforms Inc.*, No. 2025-0022 (N.H. Jan. 10, 2025) ("*New Hampshire v. Meta II*")

("[T]he ruling is immediately appealable under Rule 7 because Section 230 provides Meta with immunity from suit."); Petition for Permission to Appeal from Interlocutory Order at 2, *Utah Div. of Consumer Prot. v. Meta Platforms, Inc.*, No. 20240875-SC (Utah Aug. 15, 2024) ("*Utah v. Meta II*") ("[The lower court's] ruling warrants an immediate appeal because Meta seeks to vindicate…its federal statutory immunity from suit under Section 230."); Petition for Permission to Appeal from Interlocutory Order at 2–3, *Utah Div. of Consumer Protection v. TikTok Inc.*, No. 20241276-SC (Utah Dec. 3, 2024) ("*Utah v. TikTok II*") ("[T]he entire point of § 230 immunity…will be largely lost if [TikTok] must endure lengthy litigation before its statutory immunity as 'publisher' is enforced.").[3]

That argument has been rejected by the supreme courts of Vermont, New Hampshire, and Utah (twice), which have denied Meta and TikTok's requests for interlocutory review of their CDA losses. *See, e.g.*, Entry Order, *Vermont v. Meta II* (Vt. Dec. 23, 2024); Order, *New Hampshire v. Meta II* (N.H. Feb. 18, 2025); Order, *Utah v. Meta II*

[3] Copies of these motions are attached in the addendum as Exhibits 20–23.

(Utah Oct. 18, 2024); Order, *Utah v. TikTok II* (Utah Feb. 10, 2025).[4] At least two state trial courts have also refused to certify their orders denying Meta's motion to dismiss on CDA grounds for interlocutory review. Mem. and Order on Mot. for Report, *Massachusetts v. Meta Platforms, Inc.*, No. 23-2397-BLS1 (Mass. Super. Ct. Jan. 9, 2025); *District of Columbia v. Meta Platforms, Inc.*, No. 2023-CAB-006550, Slip Op. at 3 (D.C. Super. Ct. Nov. 25, 2024) ("*District v. Meta II*").[5] That said, while no state supreme court has accepted Meta's position that the CDA provides immunity to suit, the Massachusetts Supreme Court has taken up the question of whether that state's analogue to the collateral order doctrine—the doctrine of present execution—applies to denials of CDA motions to dismiss. *Massachusetts v. Meta Platforms, Inc.*, No. SJC-13747.

Notably, the Vermont Supreme Court refused to accept an interlocutory appeal of Meta's CDA loss even though it decided to accept interlocutory review of Meta's personal jurisdiction loss in the same

---

[4] Copies of these opinions are attached in the addendum as Exhibits 24–27.

[5] Copies of these opinions are attached in the addendum as Exhibits 28–29.

case. Entry Order, *Vermont v. Meta II* (Vt. Dec. 23, 2024). In other words, while the Vermont Supreme Court deemed proceeding against a defendant over whom the state potentially lacked personal jurisdiction a concern warranting immediate review, it did not view proceeding against a defendant who might potentially be protected by the CDA as requiring the same expeditiousness.

Finally, there are strong policy reasons to follow the lead of the Vermont, Utah, and New Hampshire Supreme Courts and to not allow unnecessary early appeals in enforcement cases like these. The Attorneys General here are seeking to protect the children of their various States from serious harms allegedly fostered by Meta's social media applications. Any interlocutory appeal on CDA grounds risks injecting potentially years of delay into the resolution of these important cases. As a District of Columbia court observed when refusing to certify its order denying Meta's motion to dismiss on CDA grounds for an interlocutory appeal:

> [W]hile the court cannot predict how the [District of Columbia] Court of Appeals would resolve an interlocutory appeal, the court notes that a growing number of state court judges who have addressed virtually the same … Section 230 arguments advanced by Meta in this case have issued rulings consistent with this court's order.… This emerging case law

> may make it more likely that an interlocutory appeal would be rejected on the merits, notwithstanding the contrary ruling from the judge overseeing the multi-district litigation in federal court. In reality, therefore, an interlocutory appeal—which would freeze this litigation for months, if not years, while the Court of Appeals considered the issues raised—might very well be more likely to delay than to speed up the resolution of this case.

District v. Meta II, Slip Op. at 3–4.

CONCLUSION

To the extent it addresses these issues, this Court should hold, consistent with the state court decisions and orders discussed above, that (1) social media addiction claims are not barred by the CDA, and (2) the CDA provides only immunity from ultimate liability, not from suit entirely.

Dated: June 30, 2025

Respectfully submitted,

VERMONT, NEW HAMPSHIRE AND NINE OTHER STATES AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLEES/CROSS-APPELLANTS

By: s/ Roger Perlstadt
One of Their Attorneys

Ryan D. Andrews
randrews@edelson.com

Roger Perlstadt
rperlstadt@edelson.com
EDELSON PC
350 North LaSalle Street, 14th Floor
Chicago, Illinois 60654
Tel: 312.589.6370
Fax: 312.589.6378

Jonathan T. Rose
Solicitor General
jonathan.rose@vermont.gov
Merideth C. Chaudoir
Assistant Attorney General
merideth.chaudoir@vermont.gov
109 State Street
Montpelier, Vermont 05609
Tel: 802.828.3176

Brandon H. Garod
Senior Assistant Attorney General
brandon.h.garod@doj.nh.gov
Kevin P.J. Scura
Senior Assistant Attorney General
kevin.p.j.scura@doj.nh.gov
New Hampshire Department of
Justice, Office of the Attorney General
1 Granite Place South
Concord, New Hampshire 03301
Tel: 603.271.3650

Jimmy Rock
jrock@edelson.com
EDELSON PC
1255 Union Street NE, Suite 850
Washington, D.C. 20002
Tel: 2.02.270.4777

Counsel for Amici Curiae

ADDITIONAL STATE ATTORNEYS GENERAL IN SUPPORT

State of Arkansas
Noah P. Watson
Deputy Solicitor General

District of Columbia
Brian L. Schwalb
Attorney General for the District of Columbia

State of Massachusetts
Andrea Joy Campbell
Attorney General
Commonwealth of Massachusetts

State of Mississippi
Lynn Fitch
Attorney General of Mississippi

State of Nevada
Aaron D. Ford
Attorney General of Nevada

State of New Mexico
Aletheia V.P. Allen
Solicitor General
New Mexico Department of Justice

State of Oklahoma
Gentner F. Drummond
Attorney General
State of Oklahoma

State of Tennessee
J. Matthew Rice
Solicitor General

State of Utah
Stanford E. Purser
Utah Solicitor General

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form08instructions.pdf

9th Cir. Case Number(s) 24-7302

I am the attorney or self-represented party.

This brief contains 2,818 **words,** including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief *(select only one)*:

- ○ complies with the word limit of Cir. R. 32-1.
- ○ is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- ◉ is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ○ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ○ complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
  - ☐ it is a joint brief submitted by separately represented parties.
  - ☐ a party or parties are filing a single brief in response to multiple briefs.
  - ☐ a party or parties are filing a single brief in response to a longer joint brief.
- ○ complies with the length limit designated by court order dated ____.
- ○ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/Roger Perlstadt **Date** June 30, 2025
*(use "*s/[typed name]*" to sign electronically-filed documents)*