

September 3, 2024

The Honorable Gavin Newsom
Governor of the State of California
State Capitol, Suite 1173
Sacramento, CA 95814

**Re: REQUEST FOR SIGNATURE: SUPPORT AND CO-SPONSORSHIP OF SB 1504 (STERN,
CO-AUTHOR OCHOA BOGH)**

Dear Governor Newsom:

The Children's Advocacy Institute at the University of San Diego School of Law (CAI), which for 30 years has worked to improve the well-being of children in California in the courts, before regulators, and through legislative advocacy, is pleased to support SB 1504 (Stern) and requests that you sign the measure. The bill will, in light of recent and repeated revelations about social media platforms failing to protect children from rampant cyberbullying, update California's current cyberbullying law by establishing customer service requirements that will require a platform to offer a prominent opportunity for reporting cyberbullying and require platforms to respond to such reports.

This need for this bill has recently become more urgent as "deepfakes" have spread. As *The Los Angeles Times* reported on August 29th,

More than 1 in 10 students say they know of peers who created deepfake nudes, report says

When news broke that AI-generated nude pictures of students were [popping up at a Beverly Hills Middle School](#) in February, many district officials and parents were horrified.

But others said no one should have been blindsided by the spread of AI-powered "undressing" programs. "The only thing shocking about this story," one Carlsbad parent said his 14-year-old told him, "is that people are shocked."

Now, a [newly released report](#) by [Thorn](#), a tech company that works to stop the spread of child sexual abuse material, shows how common deepfake abuse

has become. The proliferation coincides with the wide availability of cheap “undressing” apps and other [easy-to-use](#), AI-powered programs to create deepfake nudes.¹

BACKGROUND TO SB 1504 (STERN): LEGISLATION IS NEEDED BECAUSE THE PLATFORMS ARE STUBBORN BAD ACTORS

Unbelievably, Platforms Are *Cutting Back* On Safety.

The response of social media platforms to bi-partisan fury directed to their child-endangering practices, hundreds of lawsuits (which they are increasingly failing to have dismissed), a constant drumbeat of the worst publicity imaginable, and repeated and repeatedly shocking revelations about the lethal and damaging consequences of their products, has been, unbelievably, to cut back on safety even as their profits soar:

Big Tech companies reveal trust and safety cuts in disclosures to Senate Judiciary Committee

Snap disclosed that it had increased its trust and safety budget to “approximately \$164 million” by 2022, **but had slashed spending on trust and safety issues to \$135 million in 2023.**

The company said in 2023 its global revenue from minors was approximately \$437 million.

Snap in particular has been criticized for the continued use of the platform by individuals accused of selling [fentanyl](#) to some minors who died from taking the drug. [Parents of deceased children](#) have been particularly vocal in advocating for tech regulation.² ...

Meta and TikTok did not provide historical information to the committee about their trust and safety staffing despite requests to do so, but [previous reporting indicates](#) that Meta has also made cuts to those teams’ staff during the same time period. TikTok also [reportedly conducted layoffs](#) this year.

The platforms have made these cuts ***even though they have never been more profitable.*** “Meta Platforms gross profit for the twelve months ending December 31, 2023 was

¹ <https://www.latimes.com/california/story/2024-08-29/11-percent-of-students-say-classmates-have-created-deepfake-ai-nudes-report-says>

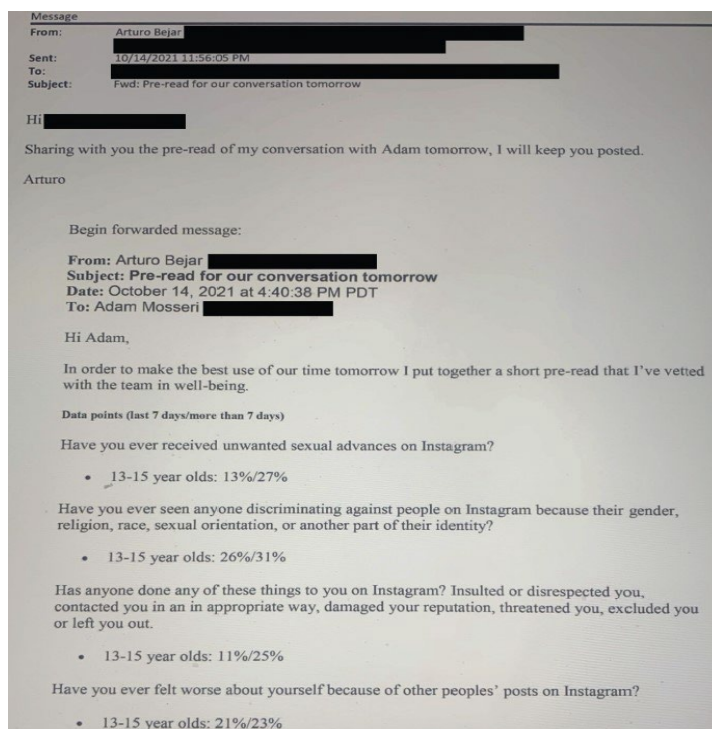
² <https://www.nbcnews.com/tech/tech-news/big-tech-companies-reveal-trust-safety-cuts-disclosures-senate-judicia-rcna145435> See also: <https://www.washingtonpost.com/technology/2023/05/23/meta-layoffs-misinformation-facebook-instagram/> (“A half-dozen current and former employees told *The Washington Post* that they worry new layoffs this week could endanger content moderation.”); <https://www.cnbc.com/2023/05/26/tech-companies-are-laying-off-their-ethics-and-safety-teams-.html> (“Meta, Amazon, Alphabet and Twitter have all drastically reduced the size of their teams focused on internet trust and safety as well as ethics as the companies focus on cost cuts.”)

\$108.943B, a 19.25% increase year-over-year. Meta Platforms annual gross profit for 2023 was \$108.943B, a 19.25% increase from 2022.”³

It is apparent that these unimaginably wealthy corporations and the executives that lead them – Mark Zuckerberg earned **\$29 billion in a single day**⁴ – are making so much money from the *status quo* of offering unsafe, addictive, products to children that bad publicity and lawsuits filed under current law can be and are being easily absorbed as just the cost of doing a business that is still otherwise fantastically profitable. Vigorous laws are, therefore, needed.

LEAKED INSTAGRAM DOCUMENTS MAKE THE CASE FOR SB 1504

As documented by *The Wall Street Journal*,⁵ Arturo Bejar, a consultant formerly on Instagram’s Well-Being team “with unusual access to top executives” testified before Congress about the knowing, stubborn failure of Instagram to take basic steps to protect its child users from cyberbullying and sexual harassment. His whistleblowing included many internal documents like the email excerpts below, affirming, ***based on Instagram’s own secret research***, the alarming breadth and consistency of bullying and both (i) the impenetrability of Instagram’s system for receiving complaints and (ii) the unresponsiveness of the giant company when complaints are filed. The first highlights unwanted sexual contact:



³ <https://www.macrotrends.net/stocks/charts/META/meta-platforms/gross-profit#:~:text=Meta%20Platforms%20gross%20profit%20for%20the%20twelve%20months%20ending%20December,a%2019.25%25%20increase%20from%202022>. Snap, too, saw record growth: <https://www.statista.com/statistics/552702/snapchat-annual-revenue/#:~:text=In%202023%2C%20Snap%20Inc%20generated,annual%20revenue%20throughout%20recent%20years>.

⁴ <https://www.mercurynews.com/2024/02/02/mark-zuckerberg-made-29-billion-this-morning-after-meta-stock-makes-record-surge/>

⁵ <https://www.wsj.com/tech/instagram-facebook-teens-harassment-safety-5d991be1>

And, another document which, in part, affirms that more than 21 percent of users 13 to 15 years of age “were subject to bullying”:

From: Arturo [REDACTED]
Subject: Gap in our understanding of harm and bad experiences
Date: October 5, 2021 at 9:37:59 PM PDT
To: Mark Zuckerberg [REDACTED]
Cc: Sheryl Sandberg [REDACTED], Chris Cox [REDACTED], Adam Mosseri [REDACTED], Mark Zuckerberg [REDACTED]

Dear Mark,

I saw the note you shared today after the testimony, and I wanted to bring to your attention what I believe is a critical gap in how we as a company approach harm, and how the people we serve experience it. I've raised this to Chris, Sheryl, and Adam in the last couple of weeks.

I want to start by saying that my personal experience, and what I believe, is that you and m-team care deeply about everyone we serve, and my goal in sending this is to be of service to that. It's been 2 years since I've been back part-time.

51% of Instagram users say 'yes' to having had a bad or harmful experience in the last 7 days. Out of those 1% of report and of those 2% have the content taken down (i.e. 0.02%). The numbers are probably similar on Facebook.

Two weeks ago my daughter [REDACTED], 16, and an experimenting creator on Instagram, made a post about cars, and someone commented 'Get back to the kitchen.' It was deeply upsetting to her. At the same time the comment is far from being policy violating, and our tools of blocking or deleting mean that this person will go to other profiles and continue to spread misogyny. I don't think policy/reporting or having more content review are the solutions.

There is detailed data about what people experience in TRIPS, a statistically significant survey. We ran a more detailed survey, I've attached the full age breakdown below, **but here are some key numbers (these questions are in the last 7 days):**

21.8% of 13-15 year olds said they were the target of bullying.
39.4% of 13-15 year olds said they experienced negative comparison.
24.4% of 13-15 year old responded said they received unwanted advances.

Yet another leaked document — unsurprisingly — reveals the yearning of users for a safer experience online:

Hate speech, divisive civic content, and graphic violence are frequently and intensely experienced, and have been shown to have a negative effect on sentiment and legitimacy, particularly with repeated exposures over time.

* * *

Users want Facebook to act. They hold us responsible for negative experience, and most think Facebook should automatically remove severe integrity-related content and hide less severe content. They perceive exposure to integrity harms as worse than false positive actions on benign posts.

* * *

. . . lack of transparency & understanding of ranking & enforcement.⁶

It is worth noting how the rampant cyberbullying and sexual harassment of children came to the attention of the whistleblower. According to *The Journal*:

Having joined the company long before its initial public offering, [Bejar] had the resources to spend the next few years on hobbies—including restoring vintage cars with his 14-year-old daughter, who documented her new pastime on Instagram.

That’s when the trouble began. A girl restoring old cars drew plenty of good attention on the platform—and some real creeps, such as the guy who told her that the only reason people watched her videos was “because you’ve got tits.”

“Please don’t talk about my underage tits,” Bejar’s daughter shot back before reporting his comment to Instagram. A few days later, the platform got back to her: The insult didn’t violate its community guidelines.

Bejar was floored—all the more so when he learned that virtually all of his daughter’s friends had been subjected to similar harassment.

THE CYBERBULLYING SOCIAL MEDIA EPIDEMIC

Instagram isn’t alone in affirming the epidemic of cyberbullying. As Attorney General Rob Bonta has correctly observed, unlawful “cyberbullying can destroy a young life. It takes the worst of youthful cruelty and puts it on that most public of forums – the Internet. Too many American young people keep quiet about online abuse. And too many kill themselves over it.”⁷ He adds:

As many as 56 percent of teens report being cyberbullied, and certain groups, such as lesbian, gay, bisexual and transgender teens, are targeted more than others. Teenagers who are cyberbullied are more likely to struggle with depression and substance abuse. They are at a higher risk offline to be victims of sexual harassment and physical assault.”⁸ ... Black or Hispanic teens are more likely than White teens to say cyberbullying is a major problem for people their age.⁹

Cyberbullying statistics show that Instagram is the most common platform for cyberbullying, closely followed by Facebook and Snapchat. Researchers found that “42 percent of

⁶ <https://socialmediavictims.org/wp-content/uploads/2023/11/Pages-from-Bejar-Whistleblower-Docs.pdf>, at p.3.

⁷ <https://oag.ca.gov/cybersafety/children/cyberbullying>

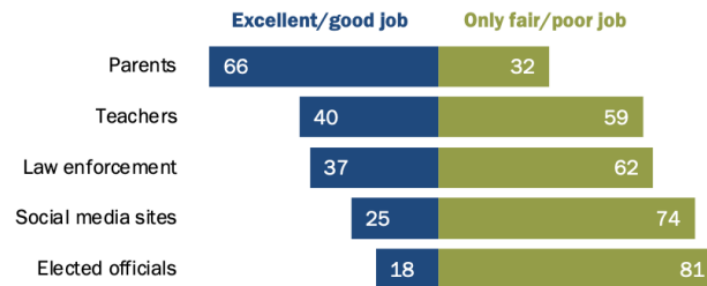
⁸ <https://oag.ca.gov/cybersafety/online/opinion>

⁹ <https://www.pewresearch.org/internet/2022/12/15/teens-and-cyberbullying-2022/>

Instagram users had been bullied on the platform compared to 37 percent for Facebook, 31 percent for Snapchat, 10 percent for YouTube and 9 percent for Twitter.”¹⁰

Large majorities of teens think social media sites and elected officials are doing an only fair to poor job addressing online harassment

% of U.S. teens who say each of the following are doing a(n) ___ when it comes to addressing online harassment and online bullying



Note: Teens are those ages 13 to 17. Excellent/good job or only fair/poor job responses are combined. Those who did not give an answer are not shown.
 Source: Survey conducted April 14-May 4, 2022.
 "Teens and Cyberbullying 2022"

PEW RESEARCH CENTER

WHAT LEVEL OF ENFORCEMENT IS NEEDED TO MOTIVATE PLATFORMS TO COMPLY WITH THE LAW? HISTORY TELLS THE TALE.

Recent disclosures and whistleblowing documenting social media platforms refusing to take modest steps to protect children from harms, including cyberbullying, reveal the pressing need to offer bullied children more protections. Current law (22589 of the Business and Professions Code) addressing platforms and cyberbullying offers no specific ability for a child to hold a platform directly accountable for failing to respond to requests to block cyberbullying and has no specific requirements ensuring that platforms heed and respond to the urgent pleas of each child being bullied.

More broadly, at least when it comes to Facebook (now called Meta), we are talking about one of the most stubbornly persistent bad actors in corporate history; something explicable when one considers that its founder was able to earn \$29 billion in a single day.¹¹ Only the most robust laws can have a hope of altering this company’s behavior. As the Federal Trade Commission explained when it issued an unprecedented order forbidding Facebook from using child data:

¹⁰ <https://www.ajc.com/news/world/this-social-media-platform-the-worst-for-cyberbullying/nsTKWz7nRG4gmDUE07BE0K/> See also <https://www.stopbullying.gov/cyberbullying/what-is-it>

¹¹ <https://www.mercurynews.com/2024/02/02/mark-zuckerberg-made-29-billion-this-morning-after-meta-stock-makes-record-surge/>

FTC Proposes Blanket Prohibition Preventing Facebook from Monetizing Youth Data

The Federal Trade Commission proposed changes to the agency's 2020 privacy order with Facebook after alleging that the company has failed to fully comply with the order, misled parents about their ability to control with whom their children communicated through its Messenger Kids app, and misrepresented the access it provided some app developers to private user data.

"Facebook has repeatedly violated its privacy promises," said Samuel Levine, Director of the FTC's Bureau of Consumer Protection. "The company's recklessness has put young users at risk, and Facebook needs to answer for its failures."

As part of the proposed changes, Meta, which changed its name from Facebook in October 2021, would be prohibited from profiting from data it collects, including through its virtual reality products, from users under the age of 18. It would also be subject to other expanded limitations, including in its use of facial recognition technology, and required to provide additional protections for users.

This is the third time the FTC has taken action against Facebook for allegedly failing to protect users' privacy. The Commission first filed a complaint against Facebook in 2011, and [secured an order](#) in 2012 barring the company from misrepresenting its privacy practices. But according to a subsequent complaint filed by the Commission, Facebook violated the first FTC order within months of it being finalized – engaging in misrepresentations that helped fuel the Cambridge Analytica scandal. In [2019, Facebook agreed to a second order](#)—which took effect in 2020—resolving claims that it violated the FTC's first order. Today's action alleges that Facebook has violated the 2020 order, as well as the Children's Online Privacy Protection Act Rule (COPPA Rule).

The [2020 privacy order](#) required Facebook to pay a \$5 billion civil penalty.¹²

Said another way, ***even a government enforcement penalty of \$5 billion dollars was insufficient to prompt Facebook to simply do what it promised a state enforcement agency it would do to protect children.***

Sadly, this is not the end of the company's record of over and over again paying fines as just a cost of doing business. Consider this list of Facebook fines and payments from Statista from just one year, 2019¹³:

¹² <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-proposes-blanket-prohibition-preventing-facebook-monetizing-youth-data>

¹³ <https://www.statista.com/statistics/1192850/fines-and-penalties-imposed-on-facebook/>

January - donation to a scam ad prevention charity in order to have a lawsuit dropped	3,900,000
March - settlement paid after multiple lawsuits alleged discrimination in advertising	5,000,000
April - fine issued by a court in Russia for storing Russian user data on servers outside the country	47
May - fine issued by Turkey's data protection authority	270,000
June - fine imposed by Italy's data protection watchdog	1,100,000
July - fine for allegedly underreporting the number of illegal hate speech complaints on Facebook, issued by German regulators	2,300,000
July - settlement paid after an FTC investigation following the Cambridge Analytica scandal	5,000,000,000
July - fine imposed by the Securities and Exchange Commission in connection to the Cambridge Analytica scandal	100,000,000
July - fine issued by a superior court judge in San Francisco for refusing to provide posts that could have helped in a criminal trial	1,000
October - fine issued for a data breach, imposed by authorities in Turkey	282,000
October - settlement as part of a lawsuit alleging that Facebook inflated viewership metrics	

But wait, there's more:

- In 2023 Meta was fined a record 1.2 billion euros (\$1.3 billion) and ordered to stop transferring data collected from Facebook users in Europe to the United States, in a major ruling against the social media company for violating European Union data protection rules.¹⁴
- In 2022 Meta agreed to pay \$90 million in settlement over a decade-old user data tracking case. By paying the settlement amount, the company avoided the risks of the case going to a trial. It looks like Mark Zuckerberg didn't want a repeat of the 2019 fine.

¹⁴ <https://www.nytimes.com/2023/05/22/business/meta-facebook-eu-privacy-fine.html>

- The social media giant had paid a settlement amount of \$650 million to settle a lawsuit in Illinois for stealing photo face-tagging and other biometric data in 2021.
- Meta-owned instant messaging platform WhatsApp was fined \$267 million in the EU for breaching its privacy laws.
- On February 29, 2024 European consumer rights groups have accused Meta, the owner of Facebook and Instagram, of carrying out a “massive” and “illegal” operation of collecting data from hundreds of millions of users in the region.
- Meta is being sued by nearly every state attorney general for harms it is causing to children and over one thousand private lawsuits have been filed, alleging the same.

This record of repeated, stubborn bad acting even in the face of what might be thought of significant financial consequences *is why Europe has resorted to imposing fines of up to 4% of annual worldwide revenue if its privacy law is violated.*¹⁵

PROBLEMS IN CURRENT LAW

Business & Professions Code section 22589, enacted by a well-intentioned AB 2879 in 2022, is simply not up to the task of prompting a company with this record meaningfully to address cyberbullying. Nor is it up to the task more generally as applied to these vast corporations.¹⁶ Among the bill’s gaps:

- It confusingly addresses only “pupils” (not defined) and not children.
- Its definition of cyberbullying is not as robust as the definitions used by social media platforms themselves.
- The “mechanism” required to report cyberbullying can be buried in the platform’s boilerplate, never-read terms of service.
- A platform is not required to respond to an entreating child in any way.
- Only the Attorney General – the agency tasked with protecting 39 million Californians with criminal, environmental, consumer rights, and a long list of urgent priorities and limited capacity – is permitted to enforce the law. Converting the Attorney General who,

¹⁵ <https://www.trade.gov/european-union-data-privacy-and-protection#:~:text=Fines%20in%20case%20of%20non,with%20assistance%20of%20legal%20counsel.>

¹⁶ The bill was not broadly supported by child advocacy groups. An organization named Outschool and the Santa Clara County Office of Education were the supporters listed on the Senate Judiciary analysis. No support was listed in the Assembly Judiciary Committee.

when they speak to a court, speaks for “The People” into some sort of private lawyer for individuals with individual case is simply inappropriate; at best a recipe for no enforcement of the laws enacted by the Legislature at all.

Said another way, because the Attorney General should not operate as a law firm for individuals, the Attorney General will not bring such cases, meaning that individuals hurt by lawbreaking will have no ability to enforce their rights unless the lawbreaking affects some unknown number of other Californians, making the case one worthy of the Attorney General.

- The most that the Attorney General can recover is \$7,500 per day against the platform. The current jurisdictional limit for small claims court is \$10,000.¹⁷

Otherwise, cyberbullying is criminally addressed. Any individual who is found guilty of using an electronic communication device to harass, intimidate, annoy, or stalk another can face the criminal charges of up to one year in county jail, a fine of up to \$1,000, or both. “Electronic communication devices” include telephones, cellphones, computers, and Internet web pages or sites, among others. (California Penal Code section 653.2)

California Education Code sections 32261, 32265, 32270, and 48900 addresses bullying in educational settings and defines bullying of pupils to include bullying committed by means of an electronic act, and authorizes school officials to suspend or recommend for expulsion pupils who engage in bullying.

SB 1504’s MEASURED APPROACH

Patterned after one part of 2023’s AB 1394 (Wicks and Flora) which likewise received broad, bi-partisan and stakeholder support,¹⁸ SB 1504 seeks to motivate social media giants to do more to address cyberbullying simply by requiring them to provide basic customer service entailing (i) not hiding where to ask for help, (ii) responding to pleas for help, and (iii) communicating the “why” of their own decision-making to those who complain they are being cyberbullied through their products in violation of the platform’s own terms and conditions. SB 1504 does this:

¹⁷

<https://www.courts.ca.gov/9617.htm?rdeLocaleAttr=en#:~:text=Small%20claims%20court%20is%20a,jurisdictional%20limits%20in%20these%20cases.>

¹⁸**Sample support:** Black Youth Leadership Project, American Academy of Pediatrics, California American Jewish Committee, Los Angeles Association of California School Administrators, California Consortium of Addiction Programs and Professionals, California Federation of Teachers, Common Sense Media, Democrats for Israel, Hadassah Holocaust Museum, LA Jewish Big Brothers Big Sisters of Los Angeles, Jewish Center for Justice, Jewish Community Relations Council of the Bay Area, Jewish Democratic Club of Marin, Jewish Family and Children’s Services of San Francisco, Jewish Family Service of Los Angeles Jewish Family Services of Silicon Valley, Parents Against Social Media Addiction, Small School Districts Association. **Assembly Judiciary Committee aye vote:** Bauer-Kahan, Bryan, Connolly, Dixon, Haney, Kalra, Maienschein, McKinnor, Pacheco, Joe Patterson, Reyes. **Assembly Privacy and Consumer Protection Committee aye vote:** Bauer-Kahan, Bryan, Dixon, Hoover, Lowenthal, Ortega, Joe Patterson, Ward, Wicks, Wilson. No “no” votes in either committee.

- By requiring platforms to adopt a prominent mechanism to report cyberbullying, not as is currently permitted, one buried in boilerplate terms and conditions or policies.
- By clarifying it applies to all children who can be bullied, not just undefined “pupils”.
- Notably, the bill does not require the platforms actually to remove any content. But it does require that the platform honor the child and the person reporting by actually responding to the complaint, including an explanation of why the alleged bullying is permitted under the platform’s own terms of service.
- By increasing the civil penalties to up to \$10,000 for violating these laws. Such financial consequences are dwarfed by those permitted in far less compelling circumstances. For example, Business & Professions Code section 5116.2 permits the Board of Accountancy, which also in part regulates vast corporations (the “Big Four” accounting firms), to assess a penalty of up to \$1 million for a first violation and not more than **\$5 million** for subsequent violations. Likewise, Business & Professions Code section 16755 imposes a maximum penalty of **\$1 million** for corporations that conspire against free trade. Other examples of fines up to **\$1 million** are found in the Labor, Financial, and Health & Safety Codes, to name a few. Surely, financially motivating far larger companies to obey a law protecting children is not less worthy.
- By adopting definitions of “severe” harm used by Meta itself to define cyberbullying, and¹⁹
- By permitting a reporting parent or school administrator to enforce these customer service laws.

AMENDMENTS TAKEN AT THE REQUEST OF OPPOSITION

Maximum penalties available for violations reduced from \$75,000 to \$10,000; removes (with the assent of teachers’ unions) the ability of teachers to enforce the law; permit platforms options to communicate with those who report; and align the bill with last year’s AB 1394 (similar bill regarding child sex abuse material reporting).

FREE EXPRESSION-RELATED OPPOSITION ARGUMENTS MISREAD THE BILL, HISTORY, AND CONSTITUTIONAL LAW

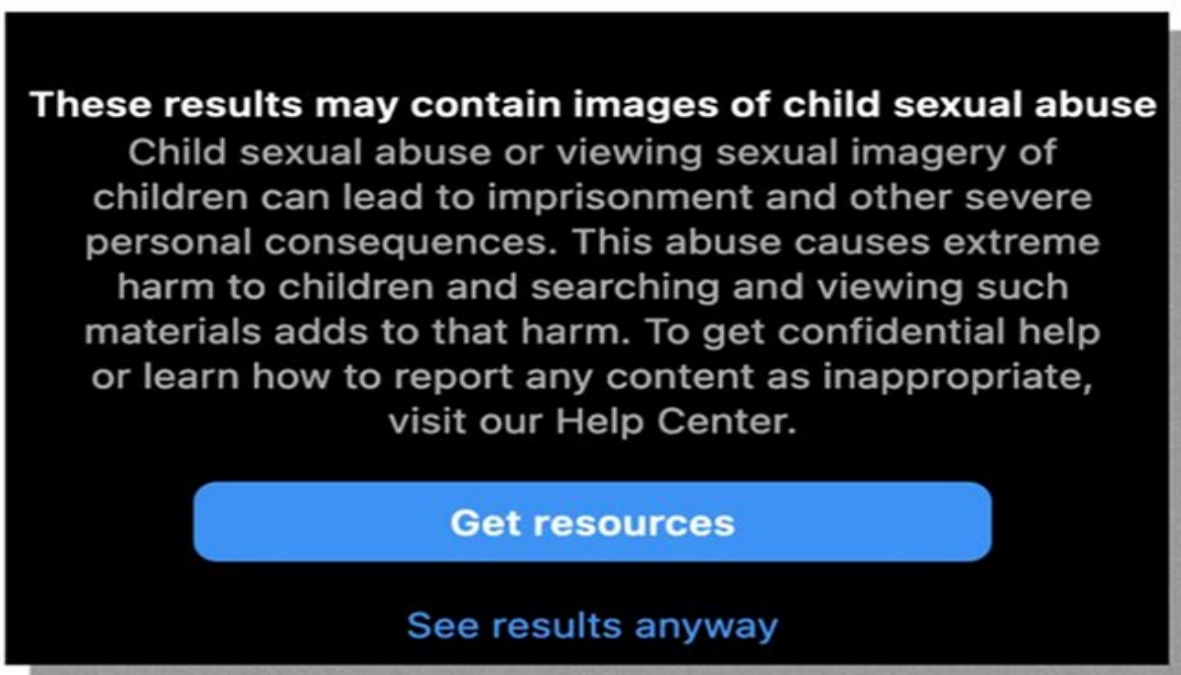
CAI honors and respects the ACLU but its arguments in opposition to this bill are not persuasive.

¹⁹ <https://transparency.fb.com/policies/community-standards/bullying-harassment/?source=https%3A%2F%2Fwww.facebook.com%2Fcommunitystandards%2Fbullying>

ARGUMENT #1. SB 1504 will “encourage social media platforms to limit the speech of or about minors.”

First, note the word “encourage.” This word is used because there is no actual requirement in the bill that a social media platform remove, block, blur, or otherwise take any similar action regarding content/speech alleged to be cyberbullying. Thus, and critically, this argument is premised *on the belief* that platforms will, in response to this bill, *voluntarily* remove so much noncyberbullying content that free speech rights of content-posters will be impaired, even though the bill has no sanction for failing to remove any content.

History utterly contradicts this belief. Social media platforms have infamously and fiercely refused to remove or block truly horrifying content, whether it is terrorism promotion, the sale of unlawful drugs, the facilitation of child sex trafficking, the praising of child suicide, or celebrating teen girl eating disorders. Want proof? Meta until a year ago actually itself identified images of child sex abuse content and then, instead of removing it voluntarily, posted this (“see results anyway”):



Second, data show most cyberbullying is done on Instagram, owned by Meta. This platform doesn't take action to protect children, *even when it is, in fact, unlike here, legally required to do so*. This according to no less an authority than the Federal Trade Commission:

*FTC Proposes Blanket Prohibition Preventing Facebook from Monetizing Youth Data.*²⁰

ARGUMENT #2: The bill's definition of "severe" will chill speech.

First, the definition is lifted virtually verbatim from Meta's own terms and conditions. See for yourself. <https://transparency.meta.com/policies/community-standards/bullying-harassment/?source=https%3A%2F%2Fwww.facebook.com%2Fcommunitystandards%2Fbullying>

Second, the requirement that cyberbullying be "severe and pervasive" conduct is (i) in *current law* and (ii) the industry-copied definition in this bill offers clarity and guidance about what that means and, so, *what it doesn't mean*. The ACLU, for example, respectfully, does not explain how speech is better protected by offering zero guidance as to what the phrase means and doesn't mean as is currently the case, especially as the definition in the bill helpfully comes from the world's leading social media platform.

Third, recall the bill does not require platforms to do anything to posted content. The definition of "cyberbullying," including what constitutes "severe and pervasive," is therefore only relevant to what kind of complaint mechanism a platform must maintain under the bill and whether it has to respond to pleas for help.

Fourth, as the ACLU acknowledges (see below), *under current law*, for conduct to constitute cyberbullying, "some ...serious harm [must be] be established." True and the First Amendment simply does not categorically protect the ability of anyone to cause anyone, especially children, "serious harm" through speech. Words that are sexually harassing in a workplace, defame, cause fights, incite riots, or dupe people into fraudulent schemes, can all along with many other kinds of speech be made unlawful and are not categorically protected by the First Amendment.

But, the ACLU argues, "[t]he fact that this definition is embedded in a broader framework that also requires that some more serious harm be established does not cure these problems. A social media platform may not know if any reported content meets the definition of cyberbullying [.]"

²⁰ <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-proposes-blanket-prohibition-preventing-facebook-monetizing-youth-data>

Which is in part exactly why the bill does not require a platform to remove, block, blur, or do anything at all regarding content. The bill only requires a prominent mechanism to complain about cyberbullying and requires that such complaints not be ignored.

And, **fifth**, *what about the right of a child not to be “seriously harmed”?* Such a right was endorsed by a unanimous U.S. Supreme Court in *Rowan v. U.S. Post Office Dept.* (1970) 397 U.S. 728. In *Rowan*, the Court rejected a First Amendment challenge to a federal statute that allowed a postal recipient to “insulate himself from advertisements that offer for sale 'matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative.'” (*Id.* at 730.) The Court held:

We therefore categorically reject the argument that a vendor has a right under the Constitution or otherwise to send unwanted material into the home of another. If this prohibition operates to impede the flow of even valid ideas, the answer is that no one has a right to press even "good" ideas on an unwilling recipient. That we are often "captives" outside the sanctuary of the home and subject to objectionable speech and other sound does not mean we must be captives everywhere. [Citation.] The asserted right of a mailer, we repeat, stops at the outer boundary of every person's domain. (*Id.* at 738, emphasis added)

Accord: *Weirun v. RKO General, Inc.* (1975) 15 Cal.3d 40, 48 "[t]he First Amendment does not sanction the infliction of physical injury merely because achieved by word, rather than act."

ARGUMENT #3: The bill's use of the word “minor” will require age verification.

First, no part of the bill requires such verification and current law addresses cyberbullying of “pupils” and no age verification has been required.

Second, under current law, “any individual” can seek help from a platform’s “mechanism” for reporting cyberbullying. No age verification is required, therefore, under current law or SB 1504 to submit a plea for help.

Third, the link offered by the ACLU in its letter to bolster its point that age verification (which the bill does not require) is constitutionally suspect underscores the difference between the law challenged in the case cited and this bill here. The Arkansas law (quoting from the link) “would have required users to provide personal information, such as a driver’s license or photo ID, to companies or applications that purport to be able to verify their ages.” Nothing of the sort is required by SB 1504.

CONCLUSION

This bill is a measured approach to a child-endangering epidemic of unprecedented proportions; one that, according to our Attorney General, disproportionately harms queer children and children of color.

Requiring these companies merely to have a prominent and predictably consistent customer service mechanism to hear and respond to the entreaties of those complaining about our children being cyberbullied should, given the stakes, which are too often life and death for, be what is minimally required.

Please sign SB 1504 (Stern).

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Howard", written in a cursive style.

Ed Howard
Senior Counsel, Children's Advocacy Institute