



September 16, 2025

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

RE: SB 771 (STERN) – REQUEST FOR SIGNATURE: “[SB 771] ensures that platforms are held to the same standard as any other business entity that plays an active role in violating statutory rights.”¹

Dear Governor Newsom:

The Children’s Advocacy Institute at the University of San Diego School of Law, the Simon Wiesenthal Center, the Consumer Federation of California, Jewish Family and Children’s Services of San Francisco, Jewish Public Affairs Committee of California, Rainbow Spaces, San Diego Democrats for Equality Executive Board, and Loma LGBTQIA+ Alumni and Allies, are honored to join in urgent co-sponsorship of SB 771. We implore you to sign the measure.

¹ Assembly Judiciary Committee analysis, at p. 7.

BACKGROUND

SB 771 is, in the main, prompted by Meta announcing in January that it is dramatically altering its Facebook and Instagram practices that previously sought to protect historically targeted groups on those platforms. Internal examples offered to Meta employees of what these new policies permit were leaked to The Intercept. Here are some:



Other examples: “Women as household objects or property”³ is permitted. So are “Gays are freaks,” “Immigrants are grubby, filthy pieces of shit,” “These damn immigrants can’t be trusted, they’re all criminals,” “Japanese are all Yakuza.” “Trans people are mentally ill,” and “Black people are more violent than Whites.”⁴ Again, these are from Meta’s own internal documents.

Notably, this policy change does not hit all users equally. As the Senate Judiciary Committee’s analysis at p. 11 correctly states, men, for example, are still protected:

So while Meta’s policy would flag “men are crazy,” posts such as “gay people are sinners,” “trans people are immoral” and “trans people are mentally ill” are all specifically allowed.

Indeed, Meta’s very own Oversight Board underscores the need for a bill that will prompt greater care from Meta, writing:

On the broader policy and enforcement changes hastily announced by Meta in January, the Board is concerned that Meta has not publicly shared what, if any, prior human rights due diligence it performed in line with its commitments under the UN Guiding Principles on Business and Human Rights. It is vital Meta

² <https://theintercept.com/2025/01/09/facebook-instagram-meta-hate-speech-content-moderation/>

³ <https://www.cnn.com/2025/01/07/tech/meta-hateful-conduct-policy-update-fact-check/index.html>

⁴ <https://theintercept.com/2025/01/09/facebook-instagram-meta-hate-speech-content-moderation/>

ensures adverse impacts on human rights globally are identified and prevented.⁵

And, thanks to a recent error for which Meta was forced to issue an apology, we now have a small window on the kind of ghastly, potentially terrorizing content it permits and can distribute to targeted groups: “The videos, featured on some users’ Reels tab, showed people apparently being shot to death or run over by vehicles.”⁶ “Numerous Instagram users on Tuesday had reported seeing a stream of recommended videos in their Reels feed showing people being beaten or killed.”⁷

WHAT IS DISTRIBUTED ON SOCIAL MEDIA TOO OFTEN RESULTS IN BLOODSHED, HARASSMENT, AND INTIMIDATION.

As one expert has observed, “[t]he reason many of [Meta’s] lines were drawn where they were is because hate speech often doesn’t stay speech, it turns into real-world conduct.”⁸ Indeed, and for example, analyses by institutions such as Harvard’s law school have documented a cause-and-effect relationship between widespread violence, including genocide, against historically targeted groups and the practices of social media platforms:

Facebook contributed to a genocide in Myanmar ... [T]he outcomes in Myanmar were a predictable result of Facebook’s business model in combination with a striking lack of moderation or enforcement of the company’s own code of conduct. ... With no international legal mechanism capable of holding Facebook accountable, the company operated without regard for the human rights of Myanmar’s citizens.⁹

As Amnesty International observed in response to Meta’s recent change, “Recent content policy announcements by Meta pose a grave threat to vulnerable communities globally and drastically increase the risk that the company will yet again contribute to mass violence and gross human rights abuses.”¹⁰

⁵ <https://www.oversightboard.com/decision/bun-lj939ea3/>

<https://www.oversightboard.com/decision/bun-lj939ea3/>

⁶ <https://thehill.com/policy/technology/5166899-meta-apologizes-for-error-that-resulted-in-violent-content-flooding-instagram-feeds/>

⁷ <https://www.cnn.com/2025/02/27/tech/meta-apologizes-gitch-violent-reels/index.html>

⁸ <https://theintercept.com/2025/01/09/facebook-instagram-meta-hate-speech-content-moderation/>

⁹ <https://systemicjustice.org/article/facebook-and-genocide-how-facebook-contributed-to-genocide-in-myanmar-and-why-it-will-not-be-held-accountable/> An investigation by the United Nations also blamed Facebook: <https://www.reuters.com/article/world/un-investigators-cite-facebook-role-in-myanmar-crisis-idUSKCN1GO2Q4/>

¹⁰ <https://www.amnesty.org/en/latest/news/2025/02/meta-new-policy-changes/>

Apart from genocide, other experts have documented cause-and-effect relationships between social media practices and teen and gang violence¹¹ and teen—especially teen girls¹²-suicide.¹³

GLAAD's president and CEO, Sarah Kate Ellis, has affirmed the connection between social media practices and real-world harm to LGBTQ+ citizens: "The hate and harassment, as well as misinformation and flat-out lies about LGBTQ people, that go viral on social media are creating real-world dangers [including] recent threats of violence at Pride gatherings."¹⁴

Ellis went on to say, "Social media platforms are active participants in the rise of anti-LGBTQ cultural climate and their only response can be to urgently create safer products and policies, and then enforce those policies."¹⁵

AS HATE AND PROFITS RISE, PLATFORMS SLASH CONTENT MODERATION.

Big Tech platforms across the board, notwithstanding record earnings¹⁶ and repeated promises about taking safety seriously, have recently slashed safety budgets. As NBC reported last year:

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

In new disclosures to the Senate Judiciary Committee, Big Tech companies revealed the details around deep cuts made to trust and safety departments across the industry in recent years.¹⁷

THIS IS THE WORST POSSIBLE TIME FOR PUBLIC OFFICIALS, OUR RULE OF LAW, AND OUR DEMOCRACY.

Meta's change and the "deep cuts made to trust and safety departments" could not come at a worse time for public officials and democracy.

Regarding just government officials, in just 2025 (the year is not yet over), in Minnesota a Democratic state legislator and her husband were shot dead, the Pennsylvania governor's residence was set ablaze while Democratic Governor and his family were inside, a Texas police officer was shot outside a detention facility in a coordinated attack, the New Mexico Republican Party headquarters was set on fire, and the Centers for Disease Control was shot at.

¹¹ <https://www.propublica.org/article/social-media-violence-young-americans>

¹² <https://news.byu.edu/intellect/10-year-byu-study-shows-elevated-suicide-risk-from-excess-social-media-time-for-young-teen-girls>

¹³ <https://www.bloomberg.com/news/features/2023-04-20/tiktok-effects-on-mental-health-in-focus-after-teen-suicide>

¹⁴ <https://www.npr.org/2022/07/13/1111113396/glaad-social-media-report-lgbtq-online-harassment>

¹⁵ *Ibid.*

¹⁶ See, e.g., "Meta Platforms gross profit for the quarter ending June 30, 2025, was \$39.025B, a 22.86% increase year-over-year." <https://macrotrends.net/stocks/charts/META/meta-platforms/gross-profit>

¹⁷ <https://www.nbcnews.com/tech/tech-news/big-tech-companies-reveal-trust-safety-cuts-disclosures-senate-judicia-rcna145435>

In 2024, President Trump himself was the target of not one but two assassination attempts. In 2022, the man who attacked former Speaker Pelosi's husband was asking, "Where's Nancy?"

Look closer, and the picture is even more alarming. In 2023, more than 450 federal judges were threatened—representing a 150% increase from 2019. Jury selection has increasingly been disrupted by potential jurors expressing diminished confidence in the judicial system.¹⁸ Serious threats against federal prosecutors also doubled during this period.¹⁹ At the legislative level, the U.S. Capitol Police investigated more than 8,000 threats to members of Congress in 2024.²⁰ Nearly 43% of state legislators reported receiving threats, with women officials targeted more frequently than men, and Republican officials reporting sharper increases than Democrats.²¹

This rising climate of political intimidation poses serious risks to democratic governance. According to the Brennan Center, because of threats, more than 40 percent of local officeholders said they were less willing to run for reelection or higher office, and 53% of state legislators believed that abuse had deterred their colleagues from taking on controversial topics.²²

THE WORST POSSIBLE TIME FOR OUR MOST VULNERABLE NEIGHBORS.

Meta's change and the "deep cuts made to trust and safety departments" could not come at a worse time for historically targeted Californians. Violence, threats, and intimidation aimed

¹⁸ "State judges should be able to perform their public duties without fear for their personal safety," the court said. U.S. District Judge Thomas Barber, who chairs a judicial security committee for the Middle District of Florida, told the News that the latest U.S. Marshals Service figures show 457 federal judges were targeted with "credible" threats last year, a 150% increase from 2019. A U.S. Marshals Service annual report for 2024 notes that "credible threats" to "protected persons" prompted 1,061 investigations in FY 2023. Judge Barber explained that general threats come from people across the political spectrum, reflecting a growing loss of confidence in U.S. institutions and a coarsening of public debate, exacerbated by the anonymity of the internet and social media. "I see it in jury selection also," Barber said. "A lot of people are saying they can't be on a jury because they don't believe in the legal system."

[https://www.floridabar.org/the-florida-bar-news/court-establishes-workgroup-on-judicial-security-to-address-growing-threats/#:~:text=%E2%80%9CState%20judges%20should%20be%20able,1%2C061%20investigations%20in%20FY%202023.\(Emphasis added.\)](https://www.floridabar.org/the-florida-bar-news/court-establishes-workgroup-on-judicial-security-to-address-growing-threats/#:~:text=%E2%80%9CState%20judges%20should%20be%20able,1%2C061%20investigations%20in%20FY%202023.(Emphasis%20added.))

¹⁹ <https://www.congress.gov/118/meeting/house/116837/documents/HHRG-118-JU08-20240214-SD002.pdf>

²⁰ <https://bhr.stern.nyu.edu/quick-take/investigating-the-role-of-social-media-in-the-rise-of-violent-rhetoric-and-actual-political-violence/>

²¹ <https://www.brennancenter.org/our-work/research-reports/intimidation-state-and-local-officeholders>

²² <https://www.brennancenter.org/our-work/research-reports/intimidation-state-and-local-officeholders#:~:text=Abuse%20threatens%20the%20free%20and,less%20willing%20to%20continue%20serving.>

explicitly at historically vulnerable populations—Jews, LGBTQ+ community members, women, immigrants, and people of color especially—are at historic highs and rising at record-shattering rates in California.

For example, in L.A. County’s most recent hate crime report, the County documented both double and triple-digit increases in hate crimes resulting in “the largest number[s] ever recorded” against the LGBTQ+ community, Jews, Asians, Blacks, Latinos, and immigrants.²³ The County’s actual report is genuinely frightening, and quoting it emphasizes the life-and-death stakes here:

Key findings show a sharp increase in victimization across multiple groups, with record levels of hate crimes targeting African Americans, Asians, Jewish people, Latino/as, LGBT* individuals, and transgender people.

- Reported hate crimes dramatically increased 45% from 930 in 2022 to 1,350 in 2023, the largest number in the history of this report and surpassing the 1,031 hate crimes from 2001 when the September 11th attacks occurred.
- There were 99 anti-transgender crimes, representing a 125% increase. This is the largest number ever documented. A staggering 97% of these crimes were violent.
- Religious crimes spiked 90% and were the second largest motivation. Anti-Jewish hate crimes rose 91% from 127 to 242. This is the largest number of anti-Jewish crimes ever recorded.
- African Americans were again grossly over-represented in reported racial hate crimes, constituting 49% of racial hate crime victims. The 320 anti-Black crimes were the highest number ever recorded.
- Anti-LGBT* crimes rose 48% from 173 to 256. This was the largest number ever documented. 73% of these crimes targeted gay men.
- Anti-Latino/a crimes rose 19% from 121 to 144. This is the highest number ever recorded. Racial crimes targeting Latinos/as were the most violent (87%) of all racial and ethnic groups.
- Anti-Asian crimes, after dipping the year prior, increased 31%. The 80 victims were the second-highest number ever recorded.
- In 2023, there were 209 crimes with evidence of White supremacist ideology, and this was the highest number ever recorded in this report. They comprised 15% of all reported hate crimes.

²³ <https://lacounty.gov/2024/12/11/highest-total-of-hate-crimes-ever-reported/>

- Hate crimes in which anti-immigrant slurs were used climbed 31%. The 123 crimes recorded in 2023 comprised the largest number ever recorded. Suspects used anti-immigrant language in 71% of anti-Latino/a crimes and in 18% of anti-Asian offenses.²⁴

WHAT SB 771 DOES AND DOES NOT DO.

Imagine if, before the Internet, a person created flyers credibly warning LGBTQ+ residents they would be murdered if they stepped out of their homes on election day to vote. Imagine that person handed the flyers to a friend to research where the neighboring LGBTQ+ residents lived and, based on that research, deliver the flyers.

Now imagine the same homophobe uploading the same flyer's credible-threat to a social media platform where the platform steps into the role of being trusted to deliver the credible and murderous threat to those who, based on the platform's own data and AI-written algorithm, may in fact be terrorized out of voting.²⁵ Here, too, there should clearly be at least a possibility, depending upon the specific facts, that the delivery platform could, no less than the delivering friend, be liable for a violation of California statutes already applicable to corporations that protect Californians against such intimidation and credible threats.

That's SB 711. The committee analyses do a superb job of explaining SB 771. We quote liberally from them, below.

What SB 771 Does.

"[SB 771] ensures that platforms are held to the same standard as any other business entity that plays an active role in violating statutory rights."²⁶

"The Limits of SB 771. ... What [SB 771] does [] is impose enhanced civil penalties on a narrow class of very large social media platforms when—and only when—they materially contribute to the violation of difficult-to-prove civil rights statutes like the Ralph Act (Section 51.7), Civil Code Section 51.9, or the Bane Act (Section 52.1). These are not speculative harms or vague grievances. They are statutory violations that already carry civil remedies and require plaintiffs to satisfy exacting standards, such as proving threats of violence motivated by bias, coercive interference with legal rights, or harassment within a business relationship tied to protected characteristics....

[SB 771] adjusts the consequences when the existing standard is already met and when the defendant is a large platform with extraordinary reach and influence. [SB 771 reflects] a legislative judgment that scale matters: that when a platform has the power to inflict

²⁴ <https://lacounty.gov/2024/12/11/highest-total-of-hate-crimes-ever-reported/>

²⁵ "Ever wondered why you see so many posts that make you angry, anxious, or overly excited? That's the algorithm at work. It knows that emotionally charged content is more likely to keep you engaged. And while you're busy reacting to these posts, the platform is collecting data on your emotional triggers." <https://medium.com/digital-empowerment-online-safety-navigating/the-dark-side-of-social-media-algorithms-what-you-need-to-know-43fe3963b5a6>

²⁶ Assembly Judiciary Committee analysis, at p. 7.

widespread harm, it should bear commensurate responsibility when it fails to prevent foreseeable injury.”²⁷

When the committee analysis refers to the “consequences,” it is referring to the civil penalties in the bill applicable only to the wealthiest social media platforms. SB 771 imposes upon such platforms the following civil penalties for violating the enumerated civil rights laws:

- For an intentional, knowing, or willful violation, a civil penalty of up to one million dollars (\$1,000,000).
- For a reckless violation, a civil penalty of up to five hundred thousand dollars (\$500,000).
- If the evidence demonstrates that the platform knew, or should have known, that the plaintiff was a minor, the court may award up to twice the penalties described above.

These amounts were dramatically reduced by the Senate Appropriations Committee. Respectfully, if the Legislature is serious about passing laws that financially motivate the wealthiest corporations in history, owned by the wealthiest people in history, to obey them, the penalties for disobeying the law must be greater than the profits to be earned from disobeying them.

Accomplishing that is no small task for this Legislature when it comes to Meta. It is both one of the most stubbornly persistent bad actors in corporate history and draped in unimaginable wealth. Its founder earned \$29 billion in a single day²⁸ and, according to the FTC, even a record fine of \$5 billion was not enough to prompt Meta to comply with the terms of a privacy settlement.²⁹ Think General Motors is a vast corporation? GM’s annual gross revenue for 2024 was \$23.40 billion. Meta’s was \$134.34 billion.

²⁷ Assembly Judiciary Committee analysis, at p. 6. (Emphasis added).

²⁸ <https://www.mercurynews.com/2024/02/02/mark-zuckerberg-made-29-billion-this-morning-after-meta-stock-makes-record-surge/>

²⁹ “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.” ... 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.” <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-proposes-blanket-prohibition-preventing-facebook-monetizing-youth-data>

But it isn't just the money that Meta will consider in weighing whether the law will actually be enforced against it in merited cases. Analyzing the law from the point of view of a victim's lawyer or a public prosecutor, Meta will ask, is the law clear enough so that someone will actually risk suing me under it, when I can easily afford to bring to the suit an unlimited number of the world's best lawyers?

For this reason, the following two parts of the bill are at least as critical to it having any hope of success in prompting responsible conduct as the earnings-proportional penalties:

(b)(1) For purposes of this section, deploying an algorithm that relays content to users may be considered to be an act of the platform independent from the message of the content relayed.

(2) A platform shall be deemed to have actual knowledge of the operations of its own algorithms, including how and under what circumstances its algorithms deliver content to some users but not to others.

Not only are both of these clarifying provisions critical to whether anyone will dare sue these titanic corporations, but they are also both indisputably true. The Senate Judiciary analysis (at p. 14) confirms the truth of the first declaration. ("This bill does not alter the law on when, or how, a social media platform—or any other party—could be held criminally or civilly liable for a crime or tort committed by a user. To the extent Moody created a space in Section 230 for a social media platform to be liable for its own arrangement and recommendation of speech, it is a narrow one, and this bill does not change that balance.")

As for the second, the inventor and user of a machine is, of course, properly deemed to know how their own invented machines work, and that is especially true with a company of the size and sophistication of Meta.

What SB 771 Does Not Do: the First Amendment, Section 230, and the Low Likelihood of a Facial Challenge Succeeding in Light of Recent Cases.

SB 771 does not alter what constitutes a violation of the cross-referenced laws. "Critically, SB 771 does not expand the substantive scope of [] civil rights laws, nor does it create liability for speech that is merely offensive or hateful. Hate speech alone—however disturbing—is not actionable under California law unless it satisfies the specific statutory requirements of one of the enumerated provisions."³⁰

"This bill does not change the legal definition of hate speech, does not impose viewpoint-based restrictions, and does not subject platforms to liability for protected expression. It imposes liability only when a platform's own conduct—its algorithmic design, content delivery practices, or engagement systems—materially contributes to unlawful acts as defined under California's civil rights laws."³¹

³⁰ Assembly Judiciary Committee analysis, at p. 6.

³¹ *Ibid.*, at p. 7.

SB 771 and the First Amendment: “Opposition’s argument that SB 771 infringes upon the First Amendment rights of social media platforms misstates both what the bill does and what the Constitution protects. SB 771 does not regulate editorial judgment, compel platforms to carry speech, or prohibit the removal of any content. It does not impose viewpoint-based burdens or interfere with platform decisions to curate or remove content consistent with their terms of service. Instead, it imposes liability where a platform’s own algorithmic conduct contributes to violations of longstanding civil rights statutes—including the Ralph Act and the Bane Act—by amplifying content that results in discrimination, harassment, or coercive interference with protected rights. The theory of liability is grounded not in the substance of the user content, but in the platform’s own conduct in delivering it.

To the extent opponents cite *NetChoice v. Paxton* (2024) 144 S.Ct. 2383, that case is not on point. There, the Court addressed facial challenges to laws that restricted content moderation and compelled platforms to carry speech. SB 771 does neither. It imposes liability not for failing to remove content, but for amplifying content in a way that foreseeably contributes to unlawful conduct under state law. And therefore, if a platform’s conduct is sufficient to violate (or aid and abet in the violation of) one of California’s long-standing civil rights statutes—none of which penalize speech alone—the likelihood of that conduct violating the First Amendment is no greater than the likelihood that California’s civil rights laws themselves violate the First Amendment.”³²

SB 771 and Section 230. “Opponents also overstate the preemptive scope of Section 230. The statute bars treating a platform as the “publisher or speaker” of content created by another. It does not immunize platforms that materially contribute to unlawful conduct or develop systems that intentionally amplify it. Nor does it preempt state civil rights statutes simply because an algorithm was involved. The opposition’s reliance on the Supreme Court’s decision in *Twitter, Inc. v. Taamneh* (2023) 143 S.Ct. 1206—which does not discuss Section 230 at all—confirms that platforms are not liable merely for failing to remove harmful content. But it also leaves open the door to liability where a platform’s own design choices play a causal role in facilitating harm, which is precisely the conduct SB 771 seeks to capture.”³³

“Two recent cases have called into question the scope of Section 230 when applied to a social media platform’s presentation of content. The United States Supreme Court, in *Moody v. NetChoice LLC*, held that social media platforms can create expressive products when they create a personalized feed for a user; these expressive products can amount to the platforms’ own speech. And the United States Court of Appeals for the Third Circuit recently allowed a wrongful death suit against TikTok on the basis that TikTok’s presentation of content to the user—separate and apart from the content itself—could have risen to the level of tortious conduct.”³⁴

³² *Ibid.*, at p. 11, bold in the original.

³³ *Ibid.*

³⁴ Senate Judiciary Committee analysis, at pp. 1-2.

“The United States Supreme Court, in *Moody v. NetChoice LLC*, held that social media platforms appear to ‘create expressive products’ when they create a personalized feed for a user. The way that platforms ‘make choices about what third-party speech to display and how to display it,’ and determine what to ‘include and exclude, organize and prioritize...produce their own distinctive compilations of expression.”³⁵

“As discussed above, *Moody* suggests there is a point at which mere ‘content moderation’ morphs into more—an act of expression by the platform itself, and at least one federal appellate court has relied on *Moody* to permit a suit against TikTok for displaying a third-party video to move forward. This bill appears aligned with the approach suggested in *Moody*, though it is an open question how the Ninth Circuit or Supreme Court would ultimately decide the issue.”³⁶

Finally, the recent cases of *Moody*³⁷ and the Ninth Circuit case of *NetChoice v. Bonta No. 25-146* (9th Cir. Sept. 9, 2025), upholding most of SB 976 (*Skinner*)³⁸ underscore that facial challenges—especially those pressed by trade associations—related to how platforms distribute content must be turned aside when, as here, the applicability of Section 230 or the First Amendment might depend upon the facts of each case and platform. Moreover, as AI enjoys no First Amendment protection, to the extent the record in an as-applied challenge shows factually that it is AI that is determining who gets what content, the First Amendment may not be implicated at all.³⁹ This is another reason a facial challenge to SB 771 would likely fail.

³⁵ *Ibid.*, at p. 12.

³⁶ *Ibid.*, at p. 15.

³⁷ “Even in the First Amendment context, facial challenges are disfavored, and neither parties nor courts can disregard the requisite inquiry into how a law works in all of its applications.” (*Moody v. NetChoice LLC* (2024) 603 U.S. 707, 744.) That is especially true if a trade group like NetChoice sues: “It is a mystery how NetChoice could expect to prevail on a facial challenge without candidly disclosing the platforms that it thinks the challenged laws reach or the nature of the content moderation they practice.” (*Moody*, (2024) 603 U.S. at 787 (Alito, Thomas, and Gorsuch, J., concurring).)

³⁸ “The First Amendment analysis is ‘fact intensive’ and will ‘surely vary’ from ‘platform to platform.’ [citation omitted] Such is the nature of a First Amendment claim related to algorithmic speech; and it is just as true in this as-applied challenge as it was in *Moody*’s facial challenge. [citation omitted] And it means, in turn, that the merits of ‘the claim asserted’ and the “relief requested” requires the participation of individual NetChoice members, making associational standing inappropriate. [citation omitted] As to the specific algorithms here, NetChoice acknowledges that each of its members is unique. That matters because the unique design of each platform and its algorithm affects whether the algorithm at issue is expressive. For example, the more an algorithm implements human editorial directions, the more likely it is to be expressive for First Amendment purposes. An algorithm that promotes a platform’s own message to users is likely to be protected speech. On the other hand, an algorithm that ‘respond[s] solely to how users act online,’ merely “giving them the content they appear to want,” probably is not expressive.” (*NetChoice v. Bonta No. 25-146* (9th Cir. Sept. 9, 2025) --- F.4th ---2025 WL 2600007, at 6–7.)

³⁹ “What if a platform’s owners hand the reins to an AI tool and ask it simply to remove “hateful” content? If the AI relies on large language models to determine what is “hateful” and should be removed, has a human being with First Amendment rights made an inherently expressive “choice ... not to propound a particular point of view”? *Hurley*, 515 U.S. at 575, 115 S.Ct. 2338. In other words, technology may attenuate the connection between content-moderation actions (e.g., removing posts) and human

CONCLUSION: PLEASE SIGN SB 771 (STERN)

One of the world's largest corporations, controlled by the world's third-wealthiest person (\$232 billion⁴⁰) has, with perfect self-awareness, imperiled the lives and rights of the most vulnerable of all Californians. Whether California responds will—if we might respectfully borrow your apt phrase—determine whether we “meet” this “moment.” By simply and modestly ensuring our 20th-century laws have the best chance of being enforced in the 21st century, SB 771 is a proportional and fair-minded response, worthy of your signature.

Sincerely,



Ed Howard
Senior Counsel, Children's Advocacy Institute
University of San Diego School of Law



Robert Herrell
Executive Director
Consumer Federation of California



Lauren Cazares
Founder, LOMA LGBTQIA+ Alumni and Allies Coalition



Director of Public Policy
Jewish Family and Children's Services of San Francisco,
the Peninsula, Marin and Sonoma Counties



Nadia Kean-Ayub
Executive Director
Rainbow Spaces

beings' constitutionally protected right to “decide for [themselves] the ideas and beliefs deserving of expression, consideration, and adherence.” (Moody v. NetChoice LLC (2024) 603 U.S. 707, 746 (Barrett, J. concurring.)

⁴⁰ “Just” \$200 billion at 3% compounding interest means Mr. Zuckerberg passively earns over \$600,000 an hour.



Ryan Trabuco,
President of San Diego Democrats for Equality



Vlad Khaykin
Executive Vice President, Social Impact & Partnerships, N. America
Simon Wiesenthal Center



Cliff Berg
Legislative Advocate
Jewish Public Affairs Committee of California