

## February Pupilage Group Script (2/18/2025)

[slide 1]

### Subgroup I (Roscoe & Sam)

**ROSCOE:** Hear ye, hear ye! Give me freedom or give me death! Live free or die! Democracy dies in darkness! Living free and bright means an unbridled, free market of ideas. Amirite?!

EVERYONE: Yessir, Chair Nelson!

**ROSCOE:** And the universal marketplace of ideas these days is the internet. Amirite?

EVERYONE: Yessir, Chair Nelson!

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**ROSCOE:** So, with those first principles established, I'm gaveling in a public hearing by the Senate Select Committee on All Things Internet and Social Media. On the agenda is proposed legislation, the Kids Online Safety Act. This bill purports to protect the safety of children on the internet by regulating online platforms, video games and messaging apps. I for one suspect this thing will give the Federal Trade Commission sweeping authority to censor conservative views. But before we find out either way, I need a refresher on our current state of internet regulation. Can someone help me out here?

[slide 3]

SBZ: Happy to do so, Senator. By way of background, the earliest days of the internet were a regulation-free Wild West. In the midst of this regulatory vacuum, a New York trial court in 1995 found that an internet service provider—as the publisher of its subscribers' posts—could be liable for the content of those posts. The court relied heavily on the fact that the provider advertised its practice of controlling content on its service and actively screened and edited material posted on its message boards.

With the passage of the Communications Decency Act in 1996, Congress sought to remove the “grim choice” that the *Stratton Oakmont* case created: imposing liability on a provider that voluntarily filtered the content of its subscribers' posts while allowing providers that buried their heads in the sand and ignored problematic posts to escape liability altogether. *Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1163 (9th Cir. 2008).

**ROSCOE:** Mr. Zeigler, before you dive further into the Communications Decency Act, can you overview the history of Congressional regulation of communications in this country?

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SBZ: Of course. The foundational law was the Communications Act of 1934, which created the Federal Communications Commission and provided the first national regulation of the communications industry. Fast forward some 60 years and the Communications Decency Act was passed as part of the larger Telecommunications Act of 1996. The Telecommunications Act made substantial amendments to the 1934 Act and aimed to ensure affordable access to telecommunications services for all.

The Communications Decency Act is embodied in Section 230 of Title 47 of the U.S. Code. It was introduced by none other than our own Ron Wyden and regulates online content considered indecent or obscene, particularly when accessed by minors.

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**ROSCOE:** Now we're getting to the heart of the matter. Tell us more about Section 230.

SBZ: Section 230(c) is known as the CDA's "good samaritan" provision. It provides that "**No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.**" 47 USC 230(c)(1). It further provides that—

"No provider or user of an interactive computer service shall be held liable on account of-

- (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise; or
- (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph."

47 U.S.C. §230(c)(2).

**ROSCOE:** Let's zero in on that first part. What does Section 230 mean when it provides that no provider or user of an interactive computer service is treated as the publisher or speaker of any information provided by another content provider?

SBZ: It means that for the last 30 years internet service providers have been immunized from liability for content posted on their websites, so long as they don't themselves provide the content. Or as the 11<sup>th</sup> Circuit Court of Appeals put it in *Almeida v. Amazon.com*, section 230 "established broad federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)).

**ROSCOE:** Okay, what about *content* providers? Are they also immune under Section 230?

SBZ: No. The courts have affirmed that Section 230 protects only *service* providers, not *content* providers.

**ROSCOE:** Does Section 230 define any of these terms?

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SBZ: It does. An “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

An “information content provider” means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

**ROSCOE:** Okay, so what are examples of information service providers?

SBZ: Well, I already mentioned one—Amazon. Other notables would be Facebook, the website hosting company GoDaddy, and Only Fans.

**ROSCOE:** Only Fans?

SBZ: That’s right.

**ROSCOE:** Okay, so can an internet service provider *also* be an information content provider?

SBZ: It can.

**ROSCOE:** Then how do the courts distinguish between the two?

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SBZ: Well, backing up, courts have developed a three-part test to determine a defendant’s entitlement to protection under Section 230(c)(1), which is the subsection I first quoted. Courts evaluate whether the following elements are met: First, whether the defendant is a provider of an interactive computer service; second, whether the claim would treat the defendant as the publisher or speaker of the content in question; and third, whether the claim is based on information provided by another “information content provider.” If all three elements are satisfied, then the ISP is entitled to immunity. Conversely, if all the answer to any of these three inquiries is no, then Section 230(c)(1) won’t bar liability. This is known as the *Barnes* test, after *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009).

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**ROSCOE:** But that still doesn’t answer my question: how to know when an ISP is also acting as the publisher or speaker of the information in question, that is, as a content provider?

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SBZ: Courts have used the prevailing “material contribution” test, which provides that a website operator will be responsible for the development of the information at issue in the case if it **directly and materially** contributes to what made the content itself unlawful. *Henderson v. Source for Pub. Data, L.P.*, 53 F.4<sup>th</sup> 110, 127 (4<sup>th</sup> Cir. 2022). On the other hand, websites “do not create or develop content when they ‘merely provide a neutral means by which third parties can post information of their own independent choosing online.’” *Rigsby v. GoDaddy, Inc.*, 59 F.4<sup>th</sup> 998, 1008 (9<sup>th</sup> Cir. 2023).

**ROSCOE:** Okay then, can you provide at least an example or two of cases applying the material contribution test? I’m trying to get a sense of the limits of ISP provider immunity under Section 230.

SBZ: A good recent example is *Doe v. Fenix International, LTD* out of the U.S. District Court for the Southern District of Florida. There, the plaintiff alleged that the two individual defendants filmed each other on video while sexually assaulting her, posted the video to OnlyFans.com, and began to sell the footage as part of a monthly subscription package. The plaintiff brought a variety of state law tort claims against the individual defendants and accused the third defendant Fenix International—the corporate owner of OnlyFans—of violating the Trafficking Victims Protection Act “by knowingly facilitating an environment for illegal content, such as the video of the plaintiff’s rape, and engaging in profit sharing with” the individual co-defendants. That corporate defendant moved to dismiss on the ground that it was immune from liability under Section 230 of the CDA.

**ROSCOE:** And?

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SBZ: And the court held that the company was immune from liability under Section 230 and therefore dismissed it from the case. The court found, among other things, that the plaintiff failed to allege that Fenix/Only Fans required the individual defendant to post any specific content on its site. Nor did the plaintiff suggest that Fenix required or even incentivized the individual defendant or other OnlyFans users to post content that (for instance) “promote[s] the exploitation of women.” OnlyFans instead “‘merely provide[d] a neutral means by which third parties can post information of their own independent choosing online.’” [PAGE CITE] (quoting *Rigsby v. GoDaddy, Inc.*, 59 F.4<sup>th</sup> 998, 1008 (9<sup>th</sup> Cir. 2023)).

**ROSCOE:** You mean that Section 230 of this Act immunizes a defendant like OnlyFans from criminal liability?

SBZ: Not at all. By its terms Section 230’s immunity provision has no effect on criminal law, IP law, communications privacy law, or sex trafficking laws. 47 USC 230(e). And nothing in Section 230 prevents any state from enforcing any state law that is **consistent** with the section’s terms. 47 USC 230(e)(3). But “no cause of action may be brought and no liability may be imposed under any State or local law that is **inconsistent** with this section.” *Id.* Here, the court’s ruling

merely recognized the company's immunity from civil liability where it did not materially contribute to the objectionable content and had no knowledge that the individual defendants were engaged in sex trafficking.

**ROSCOE:** So, absent Congress first amending Section 230 of the CDA, a state couldn't pass a law that confers liability on a defendant like OnlyFans in the *Fenix International* case. Is that right?

SBZ: Thanks to the Supremacy Clause of our federal constitution, that's correct.

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**Subgroup II** (*Roscoe, Jennifer & Brian*)

**ROSCOE:** The Chair now recognizes Senator Morrissey for her questioning of renowned psychologist, Brian Hickman, on the mental health implications of unregulated social media, with a specific focus on studies showing the negative impacts on children and youth.

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**JEN:** Thank you, Chair Nelson. Dr. Hickman, in the wake of the COVID-19 pandemic, there has been a major shift in the way children and adolescents use social media. I am aware of a recent *Pew Research* study that found a significant increase in social media usage among teens during the pandemic, with something like 95% of teenagers having access to a smartphone, and 45% reporting that they were online "almost constantly." How would you characterize the changes in social media usage patterns among children and adolescents in the post-COVID-19 era, and what impact do you believe these changes have had on their mental health?

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**BRIAN:** Multiple studies indicate that the huge increase in social media use by our teens is indeed harmful to their mental health. However, it is important to realize that it is not just the pandemic that is driving this.

Internet and social media use among our teens has skyrocketed over the last 15 years or so, so well before the pandemic. During this time, the way our teens spend their time has fundamentally changed. They are spending less time with in person interactions with friends and family, and much more time on the internet.

The most recent surveys show that 95% of our teens report using the internet daily with 45% saying they are online "almost constantly". While only 50% used social media daily in 2009, that number is now at 95%. And consider this, 22% of 10<sup>th</sup> grade girls report spending more than 7 hours/day on social media and the internet. That does not leave much time for school, sleep, or in-person interactions.

There was a surge in teen usage during the Covid-19 pandemic, which is somewhat understandable, but the numbers are not headed back down, which is troubling. If you are looking for some good news, I suppose you can point to the fact that usage levels are also no longer increasing. Of course, you cannot go much higher than 95%.

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**JEN:** Thank you. And – we now know that many studies have shown a connection between social media use and mental health issues among young people. Could you discuss the specific mental health risks, such as anxiety and depression, that have been exacerbated in children as a result of increased social media exposure? For example, I know that psychologist Jean Twenge has studied this area for years, both pre- and post-COVID, and she has recently discussed how screen time has cut into many kids' sleep time and how sleep deprivation "is a major risk factor for anxiety and depression and self-harm."

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**BRIAN:** I agree with Ms. Twenge. The lack of sleep, alone, is a major problem. Setting aside whatever issues there may be with the content our teens are viewing, there is a problem in and of itself with the interference with sleep.

From 2010 to 2021 the % of 12<sup>th</sup> graders who reported sleeping 7 or fewer hours / night rose from about 30% to now nearly 50%. This is at a time when our teens are supposed to get 9 hours of sleep a night.

That lack of sleep, alone, is enough to cause mental health problems. Since 2010, which is about when we saw the surge in social media usage with our teens, the rates for anxiety, depression and loneliness have all been on the rise. This increase shows up in self-reporting but also in behaviors such as acts of self-harm or attempted suicide. Those rates are up as well.

One of the largest studies in this area occurred during the rollout of Facebook. The researchers found the same thing: an almost immediate uptick in mental health issues – such as depression and anxiety – after Facebook became available.

The good news here is that studies have also shown that quitting social media leads to an increase in mental health.

**JEN:** In a similar vein, there has been growing concern regarding how social media contributes to negative body image, particularly among young girls. Can you explain how social media platforms, particularly visual-heavy platforms like Instagram, exacerbate body dissatisfaction and self-esteem issues in youth?

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**BRIAN:** Studies have shown that the more time a person spends browsing on Instagram, the less they appreciate their own body. This is especially true for teen girls who are nearly constantly bombarded with this idea that they need to be skinny.

We believe that the decrease in body appreciation is due to a tendency to compare oneself to the images we see on social media. That means comparing ourselves to social media influencers who make a living off of posting idealized images of themselves, as well as to just ordinary people who also tend to post idealized images of themselves.

Instagram provides its users with the opportunity to edit their content before posting it on their profiles. This results in what we call self-presentation behaviors, where a person is trying to create an idealized image of themselves. In other words, even “ordinary” people are not posting “ordinary” pictures, so we are left looking at a fake reality.

As a result, multiple studies have shown that teens experience distress, are dissatisfied with their bodies, and feel the pressure to look perfect on social media, especially so for girls when confronted with thin ideals.

**JEN:** Dr. Hickman, I want to ask you about the issue of cyberbullying. I know that this has been an ongoing issue with children and youth, but it seems to have worsened in the digital age, particularly with the rise of social media platforms post-COVID. Can you elaborate on the long-term psychological effects of cyberbullying on children and the role that social media platforms have in facilitating or mitigating these issues?

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**BRIAN:** Yes, this is a very important issue. Nearly half of US teens report being bullied or harassed online. Teen girls, in particular, report online abuse tied to their appearance.

Harassment comes in many forms. As you can see from the chart....

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Some of this sounds like “ordinary” schoolyard bullying. We were all teased at school before social media even existed, so what is the big deal? For one, online interactions tend to be largely unsupervised, so kids feel they can push the limits farther. Nobody overhears a text message. It is easier to be mean online than in-person.

Also, online interactions are often written and permanent. It used to be that if you were embarrassed at school, only a few people witnessed the event and everyone moves on after a while. Now, our kids are surrounded by cameras and video recorders. One simple misstep can create a permanent record that can be shared with others and cause true embarrassment, anguish and even depression.

Anyone who has lived long enough knows that we can all be made to look stupid, or silly, if someone follows us around with a camera and selectively edits. This kind of harassment can be very hard to shake off, as the victim feels like, because of the permanent record, they will never be able to escape the embarrassment.

Another thing to realize is that online harassment is impacting our most vulnerable the hardest. Specifically, poor teens report more harassment.



Almost 75% of teens say that the gov't and social media sites are not doing enough to curb harassment. And about ½ teens support permanent social media bans and/or criminal charges for online harassers. Clearly, the teens want us to do more to combat online harassment. Also, clearly, we are failing them.

**JEN:** Dr. Hickman, we've talked almost exclusively about the negative aspects of social media's impact on adolescents, and made us more aware of its dangers to our young people. In your professional experience, is there any upside at all to social media when it comes to teen's mental health?

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**BRIAN:** Social media *can* be of benefit, even to teens. Studies have shown that youth who experience significant anxiety or struggle can use social media as a kind of safe practice for interacting with others. It can also help teens who do not fit in with those around them but can find a peer group online. We've found this can be especially important to marginalized groups, such as LGBTQ+ teens. A connection, even if online, can help mitigate against that awful feeling of being completely alone. So, yes, there can be positives to teen social media use but, clearly, we as the adults need to do more to insure that the experience actually is positive and is not a net negative for our children, like it is currently.

**JEN:** Thank you, Dr. Hickman. The Committee appreciates your expert knowledge and insight. Chair Nelson, I have no further questions at this time and yield

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**Subgroup III** (*Roscoe, Stephan & Lee*)

**ROSCOE:** Yes, Thank you Dr. Hickman. No wonder my grandkids are so sad and detached from us. Bless their hearts. We have failed them! AmIRight?

Well, holy moly and gee willikers. I'm convinced! Why, what a crisis for our children and grandchildren! What a crisis for the Nation! Give me freedom or give me death! Live free or die! Democracy dies in darkness!

Well, Committee, sounds to me like all we gotta do here is open up the gate and let them cows come on out! Let's amend that gushdarn Section 230 of the Community Decency Act. State's can't do anything til we open wide that there gate. AmIRight? Where are my legislative aides! AmIRight?

**STEPHAN:** Well, sir, yes and no.



**ROSCOE:** Now you, DogGonelt, quit that legal-ese and give me a straight answer. You're telling me the states have to wait for us to change the federal law but they don't have to wait for us to change the federal law?

**LEE:** Well, sir, yes and no. Yes, the federal law is that the states have to wait for the this body and the Congress to pass the bill and then the President signs the bill, and that is how a bill becomes a law. There's a really cute song from Schoolhouse Rock I can sing, it you think it would help - I'm just a Bill and I'm only a Bill and I'm sitting here on Capitol Hill...

**ROSCOE:** Hey! Quit that. No singing in these hallowed chambers. AmIRight?

EVERYONE: Right!

**LEE:** Yes,sir. Sorry sir. So, yes, the states ARE supposed to wait for Section 230 of the Communications Decency Act. But, no. The states have NOT waited. They have been very busy drafting all sorts of proposed laws.

According to the National Conference of State Legislatures, 35 states and Puerto Rico addressed legislation in 2023. The legislation includes bills and resolutions that:

- Create study commissions and task forces.
- Require age verification or parental consent to open social media accounts.
- Add digital and media literacy courses or curriculum for K-12 students.

In total, the states considered over 175 separate pieces of legislation

**ROSCOE:** Friend, I'm gonna need you to pare that 175 number down to something manageable for us to get a handle on. What state worked on the most pieces of legislation? And what state got the most bills actually enacted? If we are going to get ahead of this crisis and help our kids, what laws are already in place to regulate social media and impacts on users' mental health?

**STEPHAN:** California, sir. On both counts.

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In 2022, California passed Assembly Bill 587 - Intended to ensure a range of disclosures and openness requirements, as a way to hold social media companies accountable. The goals was to do so through means of public accountability, while not running afoul of first amendment protections.

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Intended to use transparency to ensure accountability, though recentant changes in social media policies may have proven this to be ineffective. As an example.....

In January of 2025, Meta announced they were abandoning prior third party checks meant to ensure certain levels of accountability on their platforms, such as Facebook, Instagram, and others.

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There have been many attempts throughout the states to implement policies to hold Social Media companies accountable, with limited success. As a means of example:

A 787: Review of how schools are integrating social media literacy, and creation of best practices - PENDING

A 836: Social media companies shall be first amendment forums, requiring development of policies to address unprotected speech - PENDING

In 2023, the California legislature.....

And in 2024, California enacted A 1282, intended to further study the persons and populations that use and are most at risk for the negative mental health risk of social media. However, they failed to enact A 1800, which was intended to create liability for those who sold illicit substances through a social media platform.

**ROSCOE:** So what you are telling me is that California didn't make much of a dent.

**STEPHAN:** Right.

**ROSCOE:** Say, that is disappointing.

Tell me, what about my home state of Oregon? I know from that National Center for Education Statistics study that came out on January 29th that 45% of Oregon's test-takers scored below "basic" on the National Assessment of Educational Progress tests, compared with 41% nationwide. And that only New Mexico, Alabama, West Virginia and Delaware posted eighth grade math scores significantly below Oregon's. From what Dr. Hickman says about the connection between self-worth and scholastic performance, I take it to mean social media is likely having a LARGE effect on how my grandkids feel about themselves. Surely there has been some good work from my colleagues in Salem.

**LEE:** Well, sir, yes and no.

**ROSCOE:** Don't start that again! What do you mean?

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**LEE:** Well, in the 2023 Session, the Oregon House proposed one and the Oregon Senate proposed two. The Senate proposed requiring businesses providing online products, services or features that a child is reasonably likely to access to evaluate those services and mitigate risks to children from their services.

**ROSCOE:** That sounds alot like what Dr. Hickman was suggesting! How did it do?

**LEE:** It failed. The Oregon Senate also proposed an age verification step prior to allowing access to adult content.

**ROSCOE:** That's a no brainer! AmlRight?

Oh well. How about my friends in the House. What about them, surely they saw something needed to be done!

**LEE:** Well, sir, yes and no — Sorry! Um, Yes, the House did propose that there be a study on the effect of Social Media and their cell phone use. But No: it failed, too.

**ROSCOE:** Surely, Oregon got off its duff in 2024. No - No – Don't tell me: Yes and No.

**STEPHAN:** Well, actually, sir . . .

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**STEPHAN:** NO

**ROSCOE:** What have we seen in the courts around the country. That is where the pudding where the proof is. AmlRight?

**STEPHAN:** Well, sir, Yes and No.

**ROSCOE:** Good grief. Just go on and explain, please.

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**STEPHAN:** (Summarizes)

**Subgroup IV** (*Roscoe, Madyson & Bonnie*)

**Future Legislation/Lawsuits Section**

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**ROSCOE:** Thank you, thank you. Can someone please give me an overview of legislation and lawsuits that may affect this issue going forward?

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**Presenter:** First up is the Kids Off Social Media Act. This bipartisan act would prohibit the use of social media by children under the age of 13. It would also prohibit social media platforms from using recommendation algorithms for social media users under the age of 17. Finally, it would require schools to restrict children's access to social media on federally funded internet networks.

**ROSCOE:** Is this Act facing any opposition?

**Presenter:** Yes, the Act is facing opposition from several tech & civil rights groups, including the Center for Democracy and Technology, the ACLU, New America's Open Technology Institute, Fight for the Future, and the Electronic Frontier Foundation, to name a few. The Act is also facing criticism in popular culture.

**ROSCOE:** What are these groups concerned about?

**Presenter:** One concern is that the Act may unconstitutionally restrict young people's access to online services like social media platforms. Another concern is that the Act could incentivize the invasive surveillance of children by schools in a way that could violate their expectations of privacy. By diminishing kids' access to privacy on the internet, the Act could also push kids to visit unmonitored platforms and view unfiltered and potentially dangerous content, thereby undermining existing safety efforts.

**Presenter:** This Act was originally proposed in 2024, but it's been revived in 2025. Earlier this month, the Senate Commerce Committee advanced the bill to the full Senate.

**ROSCOE:** Isn't there another bill proposed to address this issue?

**Presenter:** You're probably thinking about the Kids Online Safety Act.

**ROSCOE:** Can you tell me more about that Act?

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**Presenter:** Definitely. The legislation was proposed originally in 2022 and passed the Senate 91-3 in 2024 but has never made it to the President's desk. Essentially, the bill would create a duty of care for online platforms that are likely to be used by minors. It would require social media platforms to show that they are taking "reasonable measures" to protect minors online. It would also require that social media platforms give children the option to turn off features that encourage "addiction-like" behaviors and algorithm-based content recommendations.

**ROSCOE:** I bet there's opposition to that bill, too.

**Presenter:** That's correct, Senator. This bill is opposed by several groups. Their criticism centers around a few ideas. One is the vagueness in the bill, specifically regarding what is "harmful" on

social media. Another concern is with the potential expansion of the FTC's power. Similarly to the Kids Off Social Media Act, there are also concerns around whether this type of content restriction could be unconstitutional censorship, and that the bill could target members of marginalized communities.

**ROSCOE:** I got it. Let's move along. Are there any pending lawsuits related to kids being safe online?

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**Presenter:** There are two that you should be aware of. The first was brought against Tiktok in October 2024 by 13 states and DC. The claim in that suit is that the platform was deliberately designed to encourage addiction-like behaviors in minors, thereby violating consumer protection laws and contributing to the mental health crisis among teens.

**ROSCOE:** What's the other case?

**Presenter:** The second lawsuit was brought by over 40 states against Meta in October 2023. The claim is that Meta, like TikTok, designed its products to be addictive and those products have fueled the youth mental health crisis. This case is still active, and it's already survived Meta's motion to dismiss.

**ROSCOE:** I've heard enough, let's amend Section 230 and adopt the Kids Off Social Media Act! Now I'm going to go check on those grandkids of mine! Meeting adjourned!

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**\*FIN\***