

Nos. 26-5120, 26-5121, 26-5132

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

META PLATFORMS, INC,

PLAINTIFF-APPELLANT,

v.

ROB BONTA, in his official capacity as Attorney General of California,

DEFENDANT-APPELLEE.

TIKTOK, et al,

PLAINTIFFS-APPELLANTS,

v.

ROB BONTA, in his official capacity as Attorney General of California,

DEFENDANT-APPELLEE.

GOOGLE LLC, et al,

PLAINTIFFS-APPELLANTS,

v.

ROB BONTA, in his official capacity as Attorney General of California,

DEFENDANT-APPELLEE.

On Appeal from the United States District Court
for the Northern District of California
No. 5:25-cv-09789, No. 5:25-cv-09792, No. 5:25-cv-09795

**BRIEF OF AMICI CURIAE CENTER FOR DEMOCRACY &
TECHNOLOGY, ELECTRONIC FRONTIER FOUNDATION,
AND THE WIKIMEDIA FOUNDATION IN SUPPORT OF
PLAINTIFFS-APPELLANTS AND REVERSAL**

Kate Ruane

Tess Vartanian

CENTER FOR DEMOCRACY & TECHNOLOGY

1401 K St, NW, Suite 200

Washington, DC 20005

Telephone: (202) 637-9800

Counsel for Amici Curiae

Aaron Mackey

Counsel of Record

ELECTRONIC FRONTIER FOUNDATION

815 Eddy Street

San Francisco, CA 94109

Email: amackey@eff.org

Telephone: (415) 436-9333

Fax: (415) 436-9993

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, amici state that they do not have a parent corporation and that no publicly held corporation owns 10% or more of their stock.

Dated: September 15, 2026

By: /s/ Aaron Mackey
Aaron Mackey

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STATEMENT OF INTEREST OF AMICI¹

The Center for Democracy & Technology (CDT) is a non-profit public interest organization. For thirty years, CDT has represented the public's interest in an open, decentralized Internet and worked to ensure that the constitutional and democratic values of free expression and privacy are protected in the digital age. CDT regularly advocates before legislatures, regulatory agencies, and courts in support of First Amendment rights on the Internet, including limits on governmental authority to regulate social media companies' editorial judgment and minors' First Amendment rights.

The Electronic Frontier Foundation (EFF) is a non-profit civil liberties organization with more than 30,000 active donors that has worked since 1990 to ensure that technology supports freedom, justice, and innovation for all people of the world. EFF is dedicated to protecting online users' free expression and privacy rights and has fought for them both in courts and legislatures across the country. EFF has challenged laws that burden all internet users' rights by requiring online services to verify their users' ages. *See, e.g., ACLU v. Reno*, 929 F. Supp. 824, 825 (E.D. Pa. 1996) (serving as a plaintiff challenging the Communications Decency

¹ Pursuant to Federal Rule of Appellate Procedure Rule 29(a)(4)(E), amici certify that no person or entity, other than amici curiae, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part. The parties have consented to the filing of this brief.

Act); *ACLU v. Reno*, 31 F. Supp. 2d 473, 480 n.3 (E.D. Pa. 1999) (serving as a plaintiff challenging the Child Online Protection Act).

The Wikimedia Foundation is a nonprofit charitable foundation based in San Francisco, California on a mission to “keep knowledge free.” It accomplishes that goal through advocacy work and by hosting thirteen free-knowledge platforms (the “Wikimedia Projects”), including Wikipedia. The Wikimedia Projects host factual and educational content that is created, edited, and moderated by over 275,000 volunteer contributors per month worldwide. Volunteer editors determine whether a topic is notable enough to deserve its own page, confirm that content remains accurate, and ensure that pages are notable, neutral, and cited by reliable sources. All Wikimedia projects run on a free and open-source software called MediaWiki, which is also developed collaboratively.

INTRODUCTION

Had California passed a law prohibiting bookstores from recommending books to teenagers unless their parents allowed it, the implications for teens and booksellers’ First Amendment rights would be readily apparent. That law would implicate the First Amendment rights of teenagers because it would prevent them from receiving recommendations about new books to read based on their own expressed interests, such as the genres or authors they like. *See Bd. of Educ. v. Pico*, 457 U.S. 853, 867 (1982) (plurality opinion) (protecting minors’ rights to

receive recommendations from school librarians, free of school board censorship).

The law would also implicate the bookstore's First Amendment rights because it would prohibit employees from relying on their knowledge of what books they have, what books they think teens might find interesting, and incorporating the teenagers' self-expressed interests to recommend a new book to them. Such a law would fail any level of heightened First Amendment scrutiny because its broad restrictions on both teens and booksellers' expression would not be narrowly tailored.

SB 976 burdens the same First Amendment rights of covered social media services and their users. The district court failed to recognize SB 976's intrusion on the First Amendment rights of teen internet users and social media services, holding that the law implicated neither. The court's error was both legally incorrect and dangerous. If upheld, the decision would allow states to restrict teenagers' ability to use social media as effectively as adults to share art, practice religion, organize politically, or even read the news. And those laws would be free from any level of First Amendment review.

Yet social media are "perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard." *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017). Internet users of all ages rely on social media "to engage in a wide array of protected First Amendment activity on topics 'as diverse as human

thought.”” *Id.* at 105 (quoting *Reno v. ACLU*, 521 U.S. 844, 870 (1997)). Of the billions of pieces of content available to show each user, only a small sliver can be displayed. *Moody v. NetChoice, LLC*, 603 U.S. 707, 734 (2024). Recommendation systems are the method through which platforms decide — and users influence — which content is shown to each user. All users take active part in the recommendation process, and teens specifically report finding recommendation systems to be useful for controlling what content they receive and for helping them reach their intended audiences.²

Social media services design users’ feeds by incorporating the expressive judgment of both the platforms and the users who speak, interact with friends and family, and receive information on them. Platforms take users’ feedback into account, in addition to their own content policies, priorities, and messages they wish to recommend, when making decisions about which content to show. The algorithmic systems used to determine how to arrange content, when to display it, and to whom, incorporate the human judgment and expression of the platforms and their users. In short, platforms create their recommendation systems to implement their decisions about what content to publish to users and how to arrange it: an

² See Michal Luria & Aliya Bhatia, *What Kids and Parents Want: Policy Insights for Social Media Safety Features*, Ctr. for Democracy & Tech. (Nov. 19, 2025), <https://cdt.org/insights/what-kids-and-parents-want-policy-insights-for-social-media-safety-features/>.

exercise of human editorial judgment protected by the First Amendment. *Moody*, 603 U.S. at 734. Moreover, the First Amendment's protections for these choices do not end simply because an automated process implements that human judgment.

Id.

This Court should reverse and enjoin SB 976 because its intrusion on internet users' and online services' First Amendment rights is far from narrowly tailored to address California's interest in protecting young people from compulsively using social media. Prohibiting them from using the same speech-enhancing tools every other speaker online has at their disposal absent parental consent is severely over-inclusive. SB 976 thus fails both strict and intermediate scrutiny.

Importantly, enjoining SB 976 would not foreclose California and other states from addressing concerns about the addictive nature of these recommendation systems and the private surveillance that drives them. Lawmakers could, for example, mandate that online services get permission from users before collecting information about what content they like, and give users greater tools to limit the collection, retention, and use of data about them and their preferences. Such a law would also implicate users' and services' First Amendment rights. But it would be much more narrowly tailored than SB 976.

ARGUMENT

I. RESTRICTING PERSONAL RECOMMENDATION SYSTEMS WILL HARM TEEN USERS' ABILITY TO SPEAK AND TO RECEIVE INFORMATION.

SB 976 frustrates young people's ability to use the internet to its full potential, prohibiting them from relying on tools that disseminate their speech and help them view and interact with other users' speech. Recommendation systems benefit speakers and listeners. They "help users discover new content, goods, artists, activities, and ideas."³

Ranking systems help users find signals in the noise, guiding them toward information they may find most useful, in part, based on their feedback. The ability to find and consume information online is critical to self-actualization and to democratic self-governance, as more of our learning, news consumption, and communicative activities are accomplished online.⁴

Users rely on online forums to find the news and stay up to date on current events. For instance, 80% of Black young people, 69% of Latino young people,

³ Daphne Keller, *Amplification and Its Discontents*, The Knight First Amend. Inst. at Columbia Univ. (June 8, 2021)

<https://knightcolumbia.org/content/amplification-and-its-discontents>.

⁴ See Natali Hellberger, *On the Democratic Role of News Recommenders*, 7 Digital Journalism 993 (2019), <https://tinyurl.com/2p8e5e5h>.

and 65% of white young people rely on social media to stay informed.⁵ The importance of social media for young people's access to news is reinforced by recent findings that Australian teens currently subject to the country's social media ban report getting less news as a direct result of the ban.⁶ The interactive nature of social media — facilitated by services' recommendation systems — is also central to organizing and participating in political activism, from the Tea Party movement⁷ to the #MeToo movement.⁸ Nearly half of American social media users say they have been politically active on social media, whether by participating in a political group, encouraging others to act, looking up information about rallies or protests, or using hashtags to show support for a cause.⁹

Young people also use social media for artistic creation and religious

⁵ Mary Madden et al., *A Double-Edged Sword: How Diverse Communities of Young People Think About the Multifaceted Relationship Between Social Media and Mental Health* 17 (Common Sense Media & Hopelab 2024), <https://perma.cc/4FXU-664F>.

⁶ Michael Dezuanni, Simon Chambers, & Tanya Notley, *Australian teens impacted by the social media ban are getting less news: new research*, The Conversation (May 17, 2026), <https://theconversation.com/australian-teens-impacted-by-the-social-media-ban-are-getting-less-news-new-research-281988>.

⁷ Douglas A. Blackmon et al., *Birth of a Movement*, Wall St. J. (Oct. 29, 2010), <https://perma.cc/DX44-R46A>.

⁸ Ramona Alaggia & Susan Wang, "I Never Told Anyone Until the #MeToo Movement": *What Can We Learn from Sexual Abuse and Sexual Assault Disclosures Made Through Social Media?*, 103 Child Abuse & Neglect 1, 4 (May 2020), <https://perma.cc/V2KA-JFF2>.

⁹ Samuel Bestvater et al., *Americans' Views of and Experiences with Activism on Social Media*, Pew Rsch. Ctr. (June 29, 2023), <https://perma.cc/CQF7-E6DE>.

exercise, and recommendation systems help them do so. In one study, 71% of teens reported that social media is “a place where they can show their creative side.”¹⁰ “In any given day, about one in 10 tweens and teens will use their digital devices to create some type of art or music.”¹¹ Social media is a vital source of religious and spiritual community and information for young people.¹² For example, one young person created an online church, “The Robloxian Christians,” as a place for kids on the Roblox gaming platform to pray for one another and to talk about their faith.¹³ Recommendation systems enable users to find this content, identifying users with common interests and discovering new content amidst the billions of posts shared on a platform in a given day.

Because of this, SB 976 creates significant, constitutionally violative, burdens on young users’ ability to read and comment on the news, discuss politics, find and share art, share their religious beliefs, or even practice their religion with fellow members of their faith. There is simply too much content on services for

¹⁰ Emily A. Vogels & Risa Gelles-Watnick, *Teens and Social Media: Key Findings from Pew Research Center Surveys*, Pew Rsch. Ctr. (Apr. 24, 2023), <https://perma.cc/6FC6-L3MA>.

¹¹ Victoria Rideout et al., *The Common Sense Census: Media Use by Tweens and Teens* 41 (Common Sense Media 2022), <https://perma.cc/2MUC-WT78>.

¹² See Elizabeth Dias, *Facebook’s Next Target: The Religious Experience*, N.Y. Times (July 25, 2021), <https://perma.cc/8HEX-JJAY>.

¹³ Joely Johnson Mork, *Teen’s Online Church Draws Young People From Around the World*, Faith & Leadership (Aug. 23, 2016), <https://faithandleadership.com/teens-online-church-draws-young-people-aroundthe-world>.

users to sift through manually, and young users may not know what to search for or even how to find content. “Of the billions of posts or videos (plus advertisements) that could wind up on a user's customized feed or recommendations list, only the tiniest fraction do.” *Moody*, 603 U.S. at 734. “The key to the scheme is prioritization of content, achieved through the use of algorithms.” *Id.*

Many social media users seeking audiences for their speech benefit from the platforms’ recommendation systems. Users often tailor their speech, or they tag their speech to increase the likelihood that it will be picked up by the service’s recommendation system and seen by other users who share their interests.¹⁴ Savvy users have intricate knowledge of how they can use these recommendation systems, and online guides provide insights for users to better distribute their speech.¹⁵ Teen users often know and share the ways they have learned to use services’ automated systems to their benefit.¹⁶

¹⁴ See, e.g., Ella O’Keeffe, *Very demure: explaining the new phrase that has taken the internet by storm*, *Vogue* (Aug. 15, 2024), <https://www.vogue.com.au/culture/demure-tiktok/news-story/f8417f82b723c82cf114f1cde43c2033>.

¹⁵ Laura Wong, *How to get on the TikTok FYP (For You Page): 20 expert hacks*, *Hootsuite* (Jan. 10, 2025), <http://blog.hootsuite.com/tiktok-for-you-page/>.

¹⁶ See Iretiolu Akinrinade & Joan Mukogosi, *Strategic Knowledge: Teens use “algorithmic folklore” to crack TikTok’s black box*, *Data & Soc’y* (July 14, 2021), <https://datasociety.net/research-library/strategic-knowledge-teens-use-algorithmic-folklore-to-crack-tiktoks-black-box/>

SB 976 strips teen users of these benefits and forces them to rely on search or user requests for specific content, or to limit their experiences to content from specific creators whom they know to look for. That is practically and legally insufficient to ensure that teen users have access to lawful speech that is useful to them. Users do not always know what to look for or from which source to seek it. Ranking systems, just like the bookseller, can assist in identifying and delivering useful information users may not even be aware would interest them.¹⁷

Moreover, research shows that teen users prefer systems that recommend them content over alternative systems, such as chronological feeds.¹⁸ LGBTQ+ teens particularly have found that recommendation systems can surface content that affirms their identities and helps them find and build community online.¹⁹ These systems are not perfect, but to the extent teens want them to change, they desire better controls over their feeds, including the ability to easily flag that they are not interested in certain content or accounts, or to more easily remove offensive

¹⁷ See Jonathan Stray, *Who Should See What When? Three Principles for Personalized News*, NiemanLab (July 25, 2012), <https://tinyurl.com/3nt3ukee>.

¹⁸ See Luria & Bhatia, *supra* note 2.

¹⁹ See Y. Anthony Chen & Samuel Hardman Taylor, *When the Algorithm Understands You (or Doesn't): LGBTQ+ Youth's Identity-Related Interactions with Algorithmic Media*, Commc'n Rsch. (June 13, 2026), <https://doi.org/10.1177/00936502261459750>.

content.²⁰ Incentivizing the provision of better controls over their feeds would be a less speech-restrictive path toward achieving the state’s goals.

Teen users further benefit from automated feeds because social media services rely on the same systems to limit or remove unwanted or harmful content for young users, both content that the services believe is inappropriate and content that users indicate they disfavor. Providers may deprioritize or “downrank” undesirable content to reduce its visibility or reach.²¹ Providers use downranking, for example, to curtail the spread of “borderline” content that nearly violates their rules but does not actually do so.²²

II. PERSONALIZED RECOMMENDATIONS ARE PROTECTED BY THE FIRST AMENDMENT.

SB 976 impermissibly regulates the protected speech of both users and platforms. It prohibits the provision of “addictive feeds” to users the covered platform knows are minors or, after January 1, 2027, has not verified are not minors without parental consent. Cal. Health & Safety Code § 27001. Addictive

²⁰ *Id.*; Jinkyung Katie Park et al., *Teens, Privacy, and Algorithms: Navigating and Co-Designing Solutions for Interpersonal Boundary Management on Social Media*, in *Proceedings of the 24th Interaction Design and Children* 589, 589–607 (ACM 2025), <https://doi.org/10.1145/3713043.3728840>.

²¹ Emma Llansó et al., *Artificial Intelligence, Content Moderation, and Freedom of Expression*, Transatlantic Working Group on Content Moderation Online & Freedom of Expression (Feb. 26, 2020), <https://tinyurl.com/49purumm>; Tarleton Gillespie, *Do Not Recommend? Reduction as a Form of Content Moderation*, *Soc. Media + Soc’y*, July–Sept. 2022, <https://tinyurl.com/d82m3j4d>.

²² Gillespie, *supra* note 21.

feeds are defined to include services in which “multiple pieces of media generated or shared by users are, either concurrently or sequentially, recommended, selected, or prioritized for display to a user based, in whole or in part, on information provided by the user, or otherwise associated with the user or the user’s device,” with limited exceptions.²³ This prohibits all covered companies from providing feeds acting on any feedback, whether direct or indirect, from certain users regarding the content they prefer, unless a parent approves.

Contrary to precedent, the district court found this restriction does not regulate expressive activity or raise First Amendment concerns. This was in error. Social media platforms, just like bookstores, first perform the editorial function of deciding what content belongs on the platform and what content is eligible for promotion. Then, of this vast amount of content covering a wide array of topics, the platforms decide what content to show to whom and when to show it. *Moody*, 603 U.S. at 734. Platforms do this by reviewing what content each user prefers, what content the platform believes is worthy of recommendation based on the users’ interests, which inherently reflect the platform’s judgment. As a result, the user is likely to view content that might be similar to previous content, including

²³ Exceptions include feeds that include specifically requested content or creators, information displayed based on recency, or content based on information not persistently associated with the user or their previous interactions with the service. Cal. Health & Safety Code § 27001.

being from the same creator or on the same topic. But the system may also present new content from topics and creators unfamiliar to the user that the platforms think they might like. This process is dynamic and interactive, consistently changing based on the platform's evolving judgment and each user's activities and their feedback regarding what content they do and do not prefer.²⁴

Every method of displaying third-party content online involves selecting and ordering content in some way, because there is far too much content available for any individual to consume. Vast amounts of third-party content, from videos to social media posts, tweets, blog posts, and classified advertisements, are posted online every day. Even on services where the user's feed explicitly "follows" a limited set list of sources, the number of available items can be overwhelming.²⁵ Thus, by numerical necessity, providers must make choices about what content to display to a user at any one time, and in what order. To implement these choices on a computer, social media services create algorithms, and they make editorial judgments to craft those algorithms so that they consider user feedback and actions on the platform to further shape the content each user sees.

²⁴ Gediminas Adomavicius & Alexander Tuzhilin, *Toward the Next Generation of Recommender Systems: A Survey of the State-of-the-Art and Possible Extensions*, 17 IEEE Transactions on Knowledge & Data Engineering 734, 734 (2005), <https://doi.org/10.1109/TKDE.2005.99>.

²⁵ See Akos Lada et al., *How Does News Feed Predict What You Want to See?*, Meta (Jan. 26, 2021), <https://tinyurl.com/46bchswt>.

SB 976 places a limit on the platforms' curatorial judgment by preventing them from arranging content for their teen users (as well as those who simply will not submit to age verification) based on information provided by those users. SB 976 also burdens young users, and others swept up in its dragnet, by restricting their most effective means of communicating their content preferences with platforms and blunting their ability to use the same recommendation systems to find audiences for their own speech. *See* Section I, *supra*. If SB 976 applied to booksellers from the earlier example, they would have to ignore a teen customer's expressed interest in a recommendation based on her past preference unless a parent consented. Under SB 976, the bookseller could only recommend the newest books.

Existing doctrine does not support such a crabbed view of editorial judgment and the right to receive information, both of which are protected by the First Amendment. In an unbroken line of cases, the Supreme Court has held that government attempts to alter editorial choices are subject to heightened First Amendment scrutiny. *Moody*, 603 U.S. at 741; *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (holding that editorial decisions about what speech to convey, how to arrange it, and how much to present are protected by the First Amendment and subject to strict scrutiny). Moreover, the First Amendment's protections do not change because the ultimate message is not clearly articulated or

because editorial standards are permissive. *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 574–75 (1995) (finding that parade organizers could exclude groups with messages the organizers did not favor even though the overall parade did not communicate a single message from the organizer). In this way, speakers do not lose their First Amendment rights simply because the ultimate message is a combination of others’ disparate messages or because a publisher allows more speech than it prohibits, as is generally the case in social media content.

In *Moody*, the Court explicitly applied this doctrine to social media platforms’ content moderation processes, finding government attempts to force the publication of certain content is subject to heightened scrutiny. 603 U.S. at 741. Publishing activity subject to First Amendment protection described by the *Moody* Court includes decisions about what content to include or exclude, choosing which content meets their editorial standards, how to arrange it, whether to promote it, to whom to show it and when. *Id.* *Moody* further clarifies that the use of automated systems to implement human editorial judgment does not lessen First Amendment protection for those decisions. *Id.* at 735–36. This Court recently agreed that human curatorial judgment receives First Amendment protection, including when implemented through automation. *NetChoice, LLC v. Bonta*, 152 F.4th 1002, 1014 (9th Cir. 2025).

Beyond requirements to censor or host particular speech, burdens imposed on curatorial judgment also raise significant First Amendment concerns when the underlying message is expressive. *See Bantam Books v. Sullivan*, 372 U.S. 58, 67 (1963) (holding that informal censorship that limits the distribution of speech by third parties is just as offensive to the First Amendment as direct speech restrictions); *Smith v. California*, 361 U.S. 147, 152 (1959) (finding that concerns for chilling effects on constitutional speech limited the government’s ability to criminalize the sale of obscene books without sufficient proof of knowledge).

Moreover, laws that restrict or burden communications between speakers and willing listeners implicate the First Amendment rights of both. *See U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 812 (2000). In *Playboy*, a federal law did not prohibit speech but instead made it more difficult to access adult-oriented content on cable networks by requiring providers to scramble those channels’ signals or to air the programming at specific times in the late evenings. *Id.* at 806–08. SB 976 similarly makes it more technically and practically difficult for speakers to find their audiences and for listeners to hear from speakers.

The district court sought to avoid SB 976’s intrusion on users’ First Amendment rights by divorcing the technical means of social media service’s content delivery systems from the users’ speech itself, on the theory that such speech remains available for minor users should they actively seek it out. Meta-1-

ER-27. But *Playboy* demonstrates the error of that reasoning. Although the federal law at issue did not remove any speech or limit willing viewers' ability to take steps to access the content, the Supreme Court faulted the law's technical requirements because they were aimed at burdening the delivery and reception of that speech. *Playboy*, 529 U.S. at 812. The same is true of SB 976.

SB 976's burden on social media users' First Amendment rights does not end there. Users have a First Amendment right to seek and receive information. *Stanley v. Georgia*, 394 U.S. 557, 563 (1969) ("This right to receive information and ideas . . . is fundamental to our free society."); *Lamont v. Postmaster General*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring); *Pico*, 457 U.S. at 867 (1982) (the "right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom."). It is through receiving others' speech that "our convictions and beliefs are influenced, expressed, and tested" so that we can "bring those beliefs to bear on Government and on society." *Playboy*, 529 U.S. at 817.

Audience feedback has always been a critical input into editorial decisions and never more so than in the personalized recommendations that platforms make.²⁶ Social media users, including minors, actively participate in the feedback

²⁶ See, e.g. *Nielsen Ratings*, Encyclopedia Britannica (last updated Aug. 10, 2026), <https://www.britannica.com/art/Nielsen-ratings> (noting that Nielsen ratings, which measure the popularity of television shows, began in 1950); Wong, *supra* note 15.

loop that creates the mix of content they view when they use social media services. They also create much of the content that goes into the feeds of others and design their speech in ways that increase the likelihood it will be recommended.²⁷ These activities are clearly expressive, in and of themselves, and they also work to shape platforms' expressive judgments. SB 976 significantly curtails covered users' ability to influence the content they receive and platforms' ability to take feedback from their users to recommend relevant content. In other words, SB 976 regulates both how covered platforms compile speech and information they may use to make those choices. It also limits how users may seek, receive and share speech online. By altering how both covered platforms may present their messages and how users interact with content on these platforms, SB 976 regulates expressive activity and implicates the First Amendment.

The state's aim of restricting recommendations only for minors does not eliminate, or even reduce, First Amendment concerns. The Supreme Court has been explicit that, save for specific content and contexts not relevant to SB 976, bedrock First Amendment principles apply to minors "[e]ven where the protection of children is the object." *Brown v. Entertainment Merchs. Ass'n*, 564 U.S. 786, 804–05 (2011); *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212–13 (1975) (invalidating restriction on drive-in movies designed to protect children from

²⁷ See, e.g., O'Keeffe, *supra* note 14.

nudity); *Reno*, 521 U.S. at 874 (invalidating statute prohibiting indecent communications available to minors online). The Supreme Court’s decision in *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 461 (2025) is not to the contrary and cannot save SB 976.²⁸ And the First Amendment protects not only what children can hear, but also what they can say. *See Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 187 (2021).

Because it requires covered services to treat any user not verified to be over 18 as a teenager, SB 976 will apply to any adults who use the platforms and raises constitutional concerns on that independent basis. Studies suggest that users faced with age verification barriers may abandon their efforts to access protected speech, either out of concerns for their privacy or because they do not have the information or infrastructure (e.g., a camera) to comply, leading them to be treated as minors for the purposes of SB 976.²⁹ As the Supreme Court has repeatedly recognized,

²⁸ *Paxton* held that a law that aimed to block minors’ access to content that is obscene as to minors was subject to intermediate scrutiny only because “[h]istory, tradition, and precedent recognize” that minors have no First Amendment right to access such sexually explicit speech. 606 U.S. at 472. But the Court repeatedly disclaimed any application of its decision to regulations of “fully protected speech.” *Id.* at 484, 485, 493 n.12, 494 n.13.

²⁹ Yanzi Lin, Cheng Zhang, Madelyne Xiao, Lorrie Faith Cranor & Sarah Scheffler, *User (Non-)Compliance with Age Verification: Preliminary Evidence from a Deceptive Web Experiment*, Carnegie Mellon Univ. CyLab Sec. & Privacy Inst. (Jan. 2026), <https://cs.cmu.edu/~sscheffl/AgeVerifFTC>; Keiran Pedley, *Britons Back Online Safety Act's Age Checks, but Are Skeptical of Effectiveness and Unwilling to Share ID*, Ipsos (Aug. 17, 2025), <https://www.ipsos.com/en->

laws imposing content-based burdens on adults' access to constitutionally protected content are subject to strict scrutiny. *Reno*, 521 U.S. at 874; *Ashcroft v. ACLU*, 542 U.S. 656, 665–66 (2004). While the Supreme Court's recent decision in *Paxton* permitted age verification to access speech minors do not have the constitutional right to view, it does not extend to barriers to all content on social media. 606 U.S. at 482.

SB 976 warrants the highest standard of review because it creates a content-based burden on speech. *See Playboy*, 529 U.S. at 812 (“The distinction between laws burdening and laws banning speech is but a matter of degree. The Government’s content-based burdens must satisfy the same rigorous scrutiny as its content-based bans.”). SB 976 burdens all speech on social media services, the majority of which is protected by the First Amendment and prevents young users from influencing the content that they see by sharing their preferences. Moreover, research indicates that less restrictive means are available to achieve the state’s goal of protecting teens from harm.³⁰ Teens want more tools and more controls over the content they view.³¹ The state could create incentives to provide those user

uk/britons-back-online-safety-acts-age-checks-are-sceptical-effectiveness-and-unwilling-share-id; Taylor Barkley, *Poll: Americans Don’t Want To Share Their Photo ID To Tweet*, Ctr. for Growth & Opportunity, Benchmark (Feb. 1, 2023), <https://www.thecgo.org/benchmark/poll-americans-dont-want-to-share-their-photo-id-to-tweet/>.

³⁰ Luria & Bhatia, *supra* note 2; Chen & Taylor, *supra* note 19.

³¹ Luria & Bhatia, *supra* note 2.

controls to teens rather than restricting their access to systems that benefit them.

Even if SB 976 were content-neutral, it is a governmental regulation of expressive activity that would be subject to, and would fail, intermediate First Amendment scrutiny. *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 565 (2011); *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 642 (1994). SB 976 fails intermediate scrutiny because it is significantly over-inclusive: it broadly prohibits teens from using recommendation systems and receiving other users' speech through them, absent parental consent. The law is thus far from being narrowly tailored.

Of course, recognizing SB 976's constitutional flaws does not foreclose California from regulating online services' surveillance-based business models. One could imagine a law that required services to minimize the amount of data they collect, or limit using more invasive data analysis practices, such as tracking users across multiple services, analyzing keystrokes, and other surveillance-intensive practices. Such restrictions likely would serve the state's aim of protecting all internet users — including minors — and would be more narrowly tailored to addressing the harms those practices cause than SB 976. But neither that hypothetical law nor SB 976 would be exempt from First Amendment review.

III. AUTOMATING RECOMMENDATION SYSTEMS DOES NOT DEPRIVE THEM OF FIRST AMENDMENT PROTECTIONS.

The district court erred in drawing imaginary technical and legal distinctions

between social media services' content moderation efforts and their recommendation systems: it ignored the Supreme Court's maxim that fundamental principles of the First Amendment do not change with new technologies. *Moody, LLC*, 603 U.S. at 735–36. As shown above, recommendation systems reflect human editorial judgment about what other content any given user might find interesting or important. Social media services must automate how they implement these editorial judgments out of sheer necessity given the vast volume of content that is available to be displayed to users at any given time. But the platforms' need to use automated systems does not mean that they are devoid of editorial judgment exercised by humans, much less that they are not protected by the First Amendment.

Moody recognized that modern social media feeds are organized through algorithms and repeatedly stated that decisions related to how to order and organize content is protected speech. “The key to the scheme is prioritization of content, achieved through the use of algorithms.” *Moody*, 603 U.S. at 710. “Of the billions of posts or videos (plus advertisements) that could wind up on a user's customized feed or recommendations list, only the tiniest fraction do.” *Id.* The Court understood that selection and ranking may depend on users' interests and past activities while also incorporating characteristics of the content and its creator. The Court stated clearly that social media platforms make expressive choices when

they use their “Standards and Guidelines to decide which third-party content those feeds will display, **or how the display will be ordered and organized.**” *Id.* at 740 (emphasis added). Accordingly, *Moody* does not distinguish between editorial decisions executed manually and those implemented algorithmically.

Instead, the dispositive question under *Moody* is whether recommendation systems incorporate and implement expressive judgment about what content should be available, recommended, promoted, and demoted. A footnote in *Moody* said the Court did “not deal here with feeds whose algorithms respond solely to how users act online — giving them the content they appear to want,” leaving unresolved whether the First Amendment protects personalized recommendation systems that respond solely to user behavior. *Id.* at 736 n.5. And likewise, Justice Barrett’s concurrence distinguished an algorithm that implements human editorial choices from one that autonomously gives users whatever it predicts they will like. *Id.* at 746 (Barrett, J., concurring).

Importantly, neither the majority opinion nor Justice Barrett’s concurrence foreclosed the conclusion that automated personalized recommendations incorporate editorial judgment. It only questioned whether algorithms that did not reflect human judgment were expressive. But, as shown throughout the brief, the recommendation systems used by Appellants and restricted by SB 976 incorporate expressive activity that reflects human judgment about what content to display,

order, and organize.

A. Appellants’ Recommendation Systems Implement Platform And User Judgment Rather Than Solely Reflecting Users’ Revealed Preferences Back To Them.

Although the district court below made much of the edge cases from *Moody* discussed above, they are inapt when assessing Appellants’ challenges to SB 976. The district court incorrectly drew a razor-thin distinction between content moderation and recommendation systems and held that the latter do not implicate the First Amendment. Meta-1-ER-22.

First, the court’s binary distinction between content moderation and recommendation systems obscures how intertwined these two processes are. Recommendation systems do not passively surface “popular” content: they are designed by humans to, among other things, consider the available pool of content permitted by platform content policies, define what counts as relevant, credible, or risky, and to select, weigh, and act on specific information users express and other signals.³² The social media services’ decisions to design their systems this way are neither technical nor viewpoint-neutral — they are inherently normative and expressive.³³

³² See Arvind Narayanan, *Understanding Social Media Recommendation Algorithms*, Knight First Amend. Inst. (Mar. 9, 2023), <https://knightcolumbia.org/content/understanding-social-media-recommendation-algorithms>.

³³ See *Keller*, *supra* note 3; Gillespie, *supra* note 21.

Second, platforms make editorial judgments — guided by humans — within the recommendation process itself. The platforms inject their own values into recommendations, much as they do in their initial decision making regarding which content to host. These values are layered on top of predicted user interests. Recommendation systems might use signals of trustworthiness and authoritativeness or other value-based signals to both rank certain user-generated content and then determine whether to recommend it to users. For example, Meta factors “integrity signals” into its recommendation systems and YouTube adjusts for “authoritativeness” in news results, effectively curating content based on credibility judgments.³⁴ Likewise, social media platforms collaborate with independent experts to inform what type of content gets recommended.³⁵ Accordingly, social media platforms are not just deciding what content to host through their content moderation policies; they are also making user-agnostic judgments regarding what content to affirmatively recommend.

³⁴ See David G., Sara G. & Hailey C., *Design for Safety and Integrity in Social Technologies*, Design at Meta (Feb. 28, 2022), <https://www.meta.com/design-at-meta/blog/designing-for-safety-and-integrity-in-social-technologies/>; Christos Goodrow, *On YouTube’s Recommendation System*, YouTube Blog (Sept. 15, 2021), <https://blog.youtube/inside-youtube/on-youtubes-recommendation-system/>.

³⁵ See Garth Graham, *A Guide to Healthy Screen Habits for Teens, from YouTube and the American Psychological Association*, YouTube Blog (Mar. 4, 2025), <https://blog.youtube/news-and-events/teen-healthy-screen-habits-guide/> (describing how the American Psychological Association and YouTube collaborated to identify beneficial content for teens).

Third, recommendation systems incorporate users' affirmative expressive choices. Personalized feeds are shaped both by platforms' judgments and by users' repeated communications about what they want and do not want to see. Users follow accounts, subscribe to channels, like and share posts, search for subjects, hide material, select "not interested," and otherwise provide signals that influence subsequent recommendations. Users sometimes aptly characterize this process as having built their algorithms "brick by brick": platforms make editorial decisions about how to interpret and act upon signals, while users continually communicate preferences that help shape their feed.³⁶ The process is akin to a bookseller who makes recommendations after learning something about a customer's interests. The recommendation reflects the customer's preferences, but it also reflects the bookseller's independent judgments about which works to stock, how to categorize them, and what to recommend.

Finally, the district court's characterization of automated recommendation systems overlooks the continuing role of human judgment in shaping and refining how they operate. Content moderation and recommendation do not operate as a linear process in which humans make expressive choices "upstream" and then hand

³⁶ See Ashkhen Kazaryan, *I Built This Algo Brick By Brick: Why You Should Care About Algorithms, Free Speech, and Section 230*, The Future of Free Speech (Sept. 9, 2025), <https://futurefreespeech.org/policy-paper-series-i-built-this-algo-brick-by-brick/>.

those choices off to an autonomous technological system that independently determines what users will see. Rather, recommendation systems are the product of continuous human decisions about what content is eligible for recommendation, what signals matter, what objectives the system should pursue, and how competing values should be balanced. Services repeatedly test, revise, and implement these editorial decisions through automated tools. As a result, recommendation systems are better understood as evolving systems operating under continually revised rules, human decision making, and institutional processes reflecting judgments about free-expression norms, corporate responsibility, user expectations, and other competing considerations.³⁷ Rather than treating individual moderation and recommendation decisions as isolated acts, content governance is better understood as a complex and dynamic system shaped by consequential choices about institutional architecture and decision making.³⁸ Human judgment thus is embedded throughout the system that determines how automation operates.

B. SB 976 Regulates Editorial Choices, Not Merely The Preference-Prediction Algorithms Left Unresolved By *Moody*.

The district court also erred by failing to recognize that SB 976 reaches far beyond the hypothetical fully automated recommendation system to include any

³⁷ See Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 Harv. L. Rev. 1598 (2018).

³⁸ See Evelyn Douek, *Content Moderation as Systems Thinking*, 136 Harv. L. Rev. 526 (2022).

system that incorporates any expressive choices by either teen users or the online service. Meta-1-ER-17.

SB 976 prevents teen users from receiving any recommendations based “in whole or in part” on information provided by the user or otherwise associated with the user or device, while separately exempting only specified forms of express user requests. § 27000.5(a). The law therefore regulates systems that incorporate direct user input alongside platform-defined objectives and editorial judgments, not merely the hypothetical system described in *Moody* that automatically serves content similar to material with which a user previously engaged. 603 U.S. at 746 (Barrett, J., concurring).

Because SB 976 regulates editorial choices regarding how to select and organize speech, its First Amendment implications cannot be avoided simply by labeling the regulated activity “personalized recommendation.”

CONCLUSION

For the foregoing reasons, amici respectfully request that this Court reverse the district court’s decision and enjoin SB 976.

Dated: September 15, 2026

By: /s/ Aaron Mackey
Aaron Mackey

ELECTRONIC FRONTIER
FOUNDATION
815 Eddy Street
San Francisco, CA 94109
Telephone: (415) 436-9333
Fax: (415) 436-9993
amackey@eff.org

Kate Ruane
Tess Vartanian
CENTER FOR DEMOCRACY
& TECHNOLOGY
1401 K St NW, Suite 200
Washington, DC 20005
(202) 637-9800

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify as follows:

1. This Brief of Amici Curiae Center for Democracy & Technology, Electronic Frontier Foundation, and the Wikimedia Foundation in Support of Plaintiffs-Appellants complies with the type-volume limitation of Fed. R. App. P. 32(a)(5) because this brief contains 6,427 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365, the word processing system used to prepare the brief, in 14-point font in Times New Roman font.

Dated: September 15, 2026

By: /s/ Aaron Mackey
Aaron Mackey

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system on September 15, 2026.

I certify that all participants in the case are registered ACMS users and that service will be accomplished by the appellate ACMS system.

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By: /s/ Aaron Mackey
Aaron Mackey

Counsel for Amici Curiae