

No. 25-1456

United States Court of Appeals for the Tenth Circuit

NetChoice,

Plaintiffs-Appellees,

v.

Philip J. Weiser, Attorney General of Colorado,

Defendant-Appellant.

On Appeal from the United States District Court
for the District of Colorado, No. 1:25-cv-2538-WJM-KAS
Honorable William J. Martínez

**Brief for Amici Curiae State of Utah, 42 Other States, and the
District of Columbia in Support of Appellant and Reversal**

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Introduction and Interest of Amici Curiae

This case involves Colorado’s simple requirement that social media platforms provide fact-based notices about their products—products that for many users are as addictive as they are pervasive. That was, in fact, social media’s primary goal. The first president of Facebook described the thought process behind building social media sites with remarkable candor:

[It] was all about: How do we consume as much of your time and conscious attention as possible? . . . [W]e need to sort of give you a little dopamine hit every once in a while, because someone liked or commented on a photo or a post And that’s going to get you to contribute more content It’s a social-validation feedback loop . . . exploiting a vulnerability in human psychology.

He concluded: “God only knows what it’s doing to our children’s brains.”

Greg Lukianoff & Jonathan Haidt, *The Coddling of the American Mind: How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure* 147 (2018).

Now we know. Excessive social media use has become a self-feeding phenomenon, culminating in hours of use per day for teenagers. It has caused an alarming spike in adverse mental health outcomes

among its teenage users. And worst of all, it has increased youth susceptibility to depression, anxiety, self-harm, and suicide.

Social media companies know all this too. Yet they lace their products with highly addictive features like push notifications, autoplay, and infinite scroll, overtly designed and expressly intended to “exploit a vulnerability in human psychology.” *Id.* Those functions act like casino features meant to keep gamblers at the slots and tables as long as possible. The addictive elements in social media products have nothing to do with the underlying content and everything to do with luring youth into an endless loop, where their eyeballs are constantly drawn to social media. All so social media companies can profit from the youth’s personal data. As one social media executive explained: “[t]he product in itself has baked into it compulsive use.” Jonathan Haidt & Zachary Rausch, *Social Media Is Harming Adolescents at a Scale Large Enough to Cause Changes at the Population Level*, World Happiness Report 2026 at 82 (“Haidt & Rausch”).¹

¹ <https://www.worldhappiness.report/ed/2026/social-media-is-harming-adolescents-at-a-scale-large-enough-to-cause-changes-at-the-population-level/>.

Social media companies’ efforts to “bake in” compulsion and addiction have succeeded—to put it mildly. The average teenager spends nearly five hours per day on social media. Nearly a third of 13- to 18-year-olds say they are on social media constantly. Even the most conscientious parents are losing the battle to maintain effective parental controls. For all these reasons, the U.S. Surgeon General recently warned, “we must . . . urgently take action” to protect children and youth from the harms that come from excessive social media use. U.S. Surgeon Gen., Advisory, Social Media and Youth Mental Health at 4 (2023) (Surgeon Gen. Advisory).²

Colorado, like Utah and many other States, heeded this warning. It enacted Section 4 of House Bill 24-1136, now codified as Colorado Revised Statute § 6-1-1601 (2026), to warn minors about excessive social media use. Section 4 requires social media platforms to either inform minor users about how social media use impacts the developing brain or to give regular notice to minor users about the length of time

² https://www.ncbi.nlm.nih.gov/books/NBK594761/pdf/Bookshelf_NBK594761.pdf.

they're spending on the platform and their use during normal sleeping hours. Colo. Rev. Stat. § 6-1-1601(1), (2).

Before Section 4 could go into effect, the district court enjoined its enforcement. The court held that Section 4 likely compels noncommercial speech; that strict scrutiny applies; and that Section 4 fails strict scrutiny because it is not the least restrictive means available for advancing a compelling State interest.³ But even as it preliminarily ruled Colorado's statute was likely unconstitutional, the district court assumed that Colorado had a compelling interest in protecting its youth from excessive social media use. Dkt. 31 at 25.

Amici Curiae are the States of Utah, Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawai'i, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South

³ Amici States do not concede that strict scrutiny applies to Section 4. Rather, they argue that their interest in protecting children from the harms of social media is sufficiently compelling to satisfy *any* standard of review, including the stringent standard applied by the district court here.

Carolina, South Dakota, Vermont, Virginia, Washington, West Virginia, Wyoming, and the District of Columbia (Amici States). Amici States have a strong interest in Colorado’s appeal seeking the reversal of the district court’s holding that Section 4 violates the First Amendment and the resulting injunction. Like Colorado, the Amici States have compelling interests in protecting children and youth from the harmful effects of excessive social media use—many of which are addictive by design. Amici States thus have a shared interest in supporting Colorado’s efforts to protect the mental health of its children through appropriate legislation.

Summary of the Argument

Colorado, like all States, has a compelling interest in protecting its youth and children from the harms resulting from excessive social media use. Far too many of our youth and children use social media far too much. And that is no accident: social media companies have intentionally designed their products to addict kids into overuse, exploiting their vulnerabilities and human psychology to drive increasing engagement. The result is an unprecedented increase in social media use by children and adolescents.

The attendant costs have devastated the rising generation.

Studies show that hours of social media use each day doubles the risk of bad mental health outcomes, including anxiety and depression. Overuse has also been linked with feelings of exclusion, attention problems, and sleep problems; these in turn can create a host of other serious mental health issues, including depression, altered neurological development, and suicidal thoughts.

States have a vital interest—and a moral duty—to protect their youth and children by curbing these harms. Colorado’s efforts to do so here serve that compelling interest.

Argument

States have a compelling interest in protecting youth and children from social media’s harms.

A. Social media companies leverage addictive features to maximize user engagement—including and especially for children.

Minors spend considerable time engaging in “nearly universal” use of social media. Surgeon Gen. Advisory at 4. That is by design. In recent years, social media companies have become experts at ensnaring attention spans and driving engagement with their products. And they have particularly succeeded with minors, whose developmental

immaturity makes them especially susceptible to addictive social media features.

The numbers are unsettling, but not surprising. Up to 95% of 13- to 17-year-olds report using social media platforms, with more than a third of them reporting “almost constant” social media use. *Id.* More than half of them say it would be “hard to give [social media] up.” Emily A. Vogels, Risa Gelles-Watnick, & Navid Massarat, *Teens, Social Media and Technology 2022*, Pew Research Center (Aug. 10, 2022);⁴ Surgeon Gen. Advisory at 9–10. As of 2023, the average teenager spent nearly five hours a day on social media. Jonathan Rothwell, *Teens Spend Average of 4.8 Hours on Social Media Per Day*, Gallup (October 13, 2023).⁵ Worse, 25% of 13- to 14-year-olds in the country report spending 7 hours or more on social media daily. Haidt & Rausch at 70. A 2024 Pew Research survey found that nearly one-third of US teens reported being on social media “almost constantly.” *Id.* at 74.

⁴ <https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022/>.

⁵ <https://news.gallup.com/poll/512576/teens-spend-average-hours-social-media-per-day.aspx>.

And it's not just teens. Social media use among children is also prevalent. Nearly 40% of 8- to 12-year olds use social media, Surgeon Gen. Advisory at 4, and nearly 20% percent of them report using it *every day*. Victoria Rideout et al., *Common Sense Census: Media Use by Tweens and Teens, 2021* at 5.⁶ Those numbers may be lower than for adolescents, but they are still substantial considering that 13 is the generally required minimum age to use social media platforms. *Id.*

The high levels of youth engagement are no accident. Social media platforms are knowingly designed to maximize user engagement. *Id.* at 9. Features like “push notifications, autoplay, and infinite scroll” and the quantification and display of popularity (such as “likes”) are examples of features designed to maximize engagement. *Id.* And social media sites increasingly use “algorithms that leverage user data to serve content recommendations.” *Id.*

These features are designed to be addictive. They stimulate the brain's reward center and reduce friction in use, making it easier to keep using and harder to stop, thus inducing users to stay on the

⁶ https://www.commonsensemedia.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf.

platform as long as possible. *Id.* at 9–10; 5Rights Foundation, *Pathways: How Digital Design Puts Children at Risk*, at 7, 21–47 (July 2021).⁷ As one senior data scientist at Meta put it, social media companies asked themselves “How to keep someone returning over and over to the same behavior each day?” and designed their product around the answer: “[i]ntermittent rewards” like those used by “slot machines” can “reinforc[e] behaviors that become especially hard to extinguish—even when they provide little reward, or cease providing reward at all.” Haidt & Rausch at 84–85. Social media products are—and aim to be—dopamine dispensers engineered to make their use a permanent habit.

Critically, minors are particularly susceptible to these addictive social media features. During their formative years, adolescents have less impulse control, are more sensitive to peer rewards, and are more prone to “heightened emotional sensitivity” resulting from social media use. Surgeon Gen. Advisory at 5. At the same time, “risk-taking behaviors reach their peak,” leading to a particularly “vulnerable period

⁷ <https://5rightsfoundation.com/wp-content/uploads/2021/09/Pathways-how-digital-design-puts-children-at-risk.pdf>.

of brain development.” *Id.* When it comes to psychological manipulation and physiological addiction, children are uniquely susceptible.

These vulnerabilities are no secret to social media companies; indeed, social media products are designed increasingly to exploit them. As one internal document at a major social media company reveals, companies know that minor users are “particularly sensitive to reinforcement in the form of social award,” have “minimal ability to self-regulate effectively,” and “do not have executive function to control their screen time.” Haidt & Rausch at 82. That makes children prime targets for companies seeking to maximize engagement. And companies have taken note. As one internal communication emphasized to employees, each company “want[s] to bring people to [its] service young and early”—so when it comes to enticing users, “the young ones are the best ones.” *Id.* at 84. Social media companies are similarly aware that the costs of overengagement with their platforms fall more heavily on children, who have more disposable free time and less impulse control. As one executive admitted, when “kids” engage with social media at current rates, they give up “other opportunities,” including “sleep, and eating, and moving around the room, and looking at somebody in the

eyes.” *Id.* at 82. In other words: ordinary life activities get sacrificed at the social media altar.

B. States have a vital interest in stopping harms caused by increased social media use among children.

All this social media use by children and youth has a cost—primarily one exacted on young users’ mental health. States have a compelling interest in mitigating that cost and protecting the children who live within their borders from social media’s harms.

Once again, the data is sobering. Adolescents who spend more than three hours each day on social media “face[] double the risk of experiencing poor mental health outcomes including symptoms of anxiety and depression.” Surgeon Gen. Advisory at 6. Excessive social media use has been “linked to sleep problems, attention problems, and feelings of exclusion among adolescents.” *Id.* at 10. Poor sleep, in turn, is tied to a host of other problems, including altered neurological development, depressive symptoms, and suicidal thoughts. *Id.* Problematic social media use has also been linked to ADHD symptoms. And the “social-media induced fear of missing out, or the pervasive apprehension that others might be having rewarding experiences from

which one is absent, has been associated with depression, anxiety, and neuroticism.” *Id.* (internal quotation marks and citation omitted).

On the other hand, studies show that limiting social media use improves mental health. Melissa G. Hunt et al., *No More FOMO: Limiting Social Media Decreases Loneliness and Depression*, 37 *J. Soc. & Clinical Psych.* 751, 751–58, 766–68 (2018).⁸ A randomized controlled trial in college-aged youth found limiting social media use to thirty minutes daily over three weeks led to significant improvements in loneliness and depression. *Id.*; see also Melissa G. Hunt et al., *Follow Friends One Hour a Day: Limiting Time on Social Media and Muting Strangers Improves Well-Being*, 44 *J. Soc. & Clinical Psych.* 187 (2023).⁹ Other studies also show improvement in mental health outcomes when social media use is restricted. Roberto Mosquera et al., *The Economic*

⁸ https://www.researchgate.net/publication/328838624_No_More_FOMO_Limiting_Social_Media_Decreases_Loneliness_and_DepressionPDF
[No More FOMO: Limiting Social Media Decreases Loneliness and Depression](https://www.researchgate.net/publication/328838624_No_More_FOMO_Limiting_Social_Media_Decreases_Loneliness_and_Depression).

⁹ https://www.researchgate.net/publication/371242707_Follow_Friends_One_Hour_a_Day_Limiting_Time_on_Social_Media_and_Muting_Strangers_Improves_Well-Being.

Effects of Facebook (Feb. 2019).¹⁰ For example, a study that paid people to deactivate social media reported that reduced social media use increased general happiness. Hunt Allcott et al., *The Welfare Effects of Social Media*, 110 Am. Econ. Rev. 638, 653–56, 672 (2020).¹¹ And an experiment found reducing social media use to one hour a day improved youths’ confidence in their appearance. Helen Thai et al., *Reducing Social Media Use Improves Appearance and Weight Esteem in Youth with Emotional Distress*, 13 Psychology of Popular Media 162 (2024).¹²

The upshot: as a recent meta-analysis of 32 randomized controlled studies concluded, “restricting social media produce[s] consistent improvements in mental health and wellbeing outcomes,” including significant reductions in depression and anxiety. Haidt & Rausch at 89. It’s no wonder that “one-third to one-half” of Gen Z respondents in a recent survey stated that they wish that many of the largest social media platforms—platforms they use for “five or more hours a day”—

¹⁰ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3312462.

¹¹ <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20190658>.

¹² <https://www.apa.org/pubs/journals/releases/ppm-ppm0000460.pdf>.

“had never existed.” *Id.* at 74. The near-constant use of those platforms causes significant harm to mental health.

This real harm to minors is why many States, like Colorado, have passed their own laws designed to protect children from the damage caused by social media. States have also pursued advocacy and enforcement actions to protect minors from social media harms. For example, 43 States sent a letter to TikTok and Snapchat urging them to implement stronger parental controls on their platforms. Letter from State Attorneys General to Matthew Penarczyk & Michael O’Sullivan (March 28, 2022).¹³ And 48 States expressed support for the U.S. Senate’s 2021 investigation into the impact Facebook and Instagram’s algorithms have on minors’ mental health. Letter from State Attorneys General to United States Senate Committee on Commerce, Science, and Transportation (Oct. 4, 2021).¹⁴

¹³ <https://www.naag.org/wp-content/uploads/2022/03/NAAG-Final-Letter-Parental-Control-App.pdf>.

¹⁴ <https://www.naag.org/wp-content/uploads/2021/10/Final-NAAG-Letter-to-Senate-Subcommittee-on-Consumer-Protection-Product-Safety-and-Data-Security.pdf>.

Here as in those cases, Colorado has an important interest in its children’s mental health and well-being. That interest extends to protecting those children under the age of 18 from compulsive social media use by regulating the platforms that minors use because they are designed to maximize user engagement. The district court’s ruling that Colorado cannot enforce its law to protect those interests—if affirmed—could chill other States’ attempts to address the harms social media causes children and youth.

Conclusion

This Court should hold that Colorado has a compelling interest in protecting its minors from harms caused by social media; reverse the district court’s preliminary injunction; and reverse the district court’s order stating that Section 4 does not survive constitutional scrutiny.

Respectfully submitted,

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I certify that:

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f) and Tenth Circuit Rule 32(B), this document contains 2,589 words.

2. This brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)–(6) and Tenth Circuit Rule 32(A) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

/s/ Mark C. Gillespie

Certificate of Service

I hereby certify that the foregoing brief was served on all counsel of record for all parties via the ECF system.

/s/ Mark C. Gillespie