State of New York
Court of Appeals

OPINION

This opinion is uncorrected and subject to revision before publication in the New York Reports.

Nos. 68-71
Diona Patterson, &c., et al.,
Appellants,
v.
Meta Platforms, Inc., &c., et al.,
Respondents,
et al.,
Defendants.
(And Three Other Appeals.)

Jennifer Bennett, for appellants Salter, et. al., Stanfield, et al., and Jones.
Matthew P. Bergman, for appellants Patterson, et al.
Grace X. Zhou, for amicus curiae New York State Attorney General.
Eric A. Shumsky, for respondents Meta Platforms, Inc. et al.
Moez M. Kaba, for respondents Amazon.com, Inc. et al.
Lisa LeCours, for respondent 4Chan Community Support, LLC.
Center for Democracy and Technology et al., Eugene Volokh et al., Product Liability Advisory Council, Knight First Amendment Institute at Columbia University, Software & Information Industry Association et al., New York State Academy of Trial Lawyers, Center for Countering Digital Hate, Chamber of Progress, TechFreedom, Cyber Civil Rights Initiative, amici curiae.

MEMORANDUM:

In each case, the order of the Appellate Division should be affirmed, with costs.

On May 14, 2022, a man motivated by heinous white supremacist ideologies he allegedly adopted due to content he viewed on social media carried out a mass shooting at

a Buffalo grocery store, killing 10 and injuring three others. Plaintiffs, victims of the shooting and their family members, commenced these actions against the shooter's parents, firearms manufacturers, and social media companies, seeking compensation for their injuries. These appeals concern motions to dismiss plaintiffs' claims against several social media companies whose platforms the shooter allegedly used before committing this unspeakable act of violence. Specifically, plaintiffs contend that their complaints state causes of action for products liability based on defective features of these social media defendants' platforms and their failure to warn thereof.

Initially, plaintiffs allege that Twitch, Discord, and 4chan target teens and are hotbeds of violent and radicalizing content, which the platforms have failed to address. But plaintiffs do not allege that these social media platforms possessed any of the addictive features that they now contend place their claims beyond the reach of section 230 of the Communications Decency Act (47 USC § 230). Thus, we see no reason to disturb the dismissal of the complaints as to Discord, Inc., Amazon.com, Inc., Twitch Interactive, Inc., and 4chan Community Support, LLC.

As to the remaining social media defendants, Meta Platforms, Inc., Instagram, LLC, Snap, Inc., Alphabet, Inc., Google, LLC, YouTube, LLC, and Reddit, Inc., plaintiffs failed to adequately plead that features of these social media defendants' products proximately caused their injuries. Generally, a defendant's acts qualify as a proximate cause when they are "a substantial cause of the events which produced the injury" (*Mazella v Beals*, 27 NY3d 694, 706 [2016], quoting *Derdiarian v Felix Contr. Corp.*, 51 NY2d 308, 315 [1980]). This inquiry examines

> "the foreseeability of the event resulting in injury; the passage of time between the originally negligent act and the intervening act; the spatial gap, if any, between the original act and the intervening act; whether the original act of negligence was a completed occurrence or was ongoing at the time of the intervening act; whether and, if so, what other forces combined to bring about the harm; as well as public policy considerations regarding the scope of liability" (*Hain v Jamison*, 28 NY3d 524, 530 [2016]).

Foreseeability is often the most significant factor (*see id.*). Indeed, if an unforeseeable intervening criminal act of a third party causes the plaintiff's injury, the causal connection is severed (*see Mazella*, 27 NY3d at 706). Thus, proximate causation will not be found when the intervening act "is extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct" (*Hain*, 28 NY3d at 529, quoting *Mazella*, 27 NY3d at 706; *cf. Derdiarian*, 51 NY2d at 316 ["An intervening act may not serve as a superseding cause, and relieve an actor of responsibility, where the risk of the intervening act occurring is the very same risk which renders the actor negligent"]; *Kush v City of Buffalo*, 59 NY2d 26, 33 [1983] [students' theft of dangerous chemicals that school had not properly secured did not sever causal chain]; *Scurry v New York City Hous. Auth.*, 39 NY3d 443, 455 [2023] [intruders' entry into residence and murder of tenants did not sever causal chain where housing authority failed to provide functioning door locks]). "Although foreseeability and proximate cause are generally questions for the factfinder, there are instances in which proximate cause can be determined as a matter of law because 'only one conclusion may be drawn from the established facts' " such as when "the original negligent act merely 'furnished the occasion for'—but did not cause—'an unrelated act to cause injuries not

ordinarily anticipated' " (*Hain*, 28 NY3d at 529-530, quoting *Derdiarian*, 51 NY2d at 315-316).

Here, plaintiffs failed to adequately allege that the remaining social media defendants' product defects proximately caused the shooter to carry out the mass shooting that resulted in plaintiffs' injuries. The complaints, even accepting the factual allegations as true, fail to establish that the shooter's actions were a natural and foreseeable consequence of these defendants' decisions about how to design and operate their platforms. Instead, under the circumstances, the shooter's actions were so extraordinary as to sever the causal chain as a matter of law.[1] We therefore need not address the scope of section 230 of the Communications Decency Act or how it would apply to the claims against these defendants.

[1] Our conclusion is limited to the unusual facts of this case, where the platforms' assertedly addictive features were alleged to have harmed the shooter rather than the plaintiffs directly.

HALLIGAN, J. (concurring):

I join the majority because I agree that the plaintiffs have not adequately pleaded proximate causation. I write separately to underscore that, for me, this conclusion rests

squarely on the highly unusual facts presented here, and to offer some additional thoughts regarding the scope of section 230.

As an initial matter, I agree with my dissenting colleagues that the plaintiffs alleged that several of the defendants tortiously designed addictive products (dissenting op at 32). The complaints make a number of general claims about social media and youth: that defendants' platforms are addictive; that compulsive use of social media, particularly by young people, causes emotional disturbance and "impulsive decision-making and risk-taking behavior"; and that such use can also yield other deleterious consequences, including "sleep disturbances, mental health problems and suicidal ideation, and violent, hateful acts." The complaints further assert that the social media defendants, knowing of the addictive quality of their products and the heightened susceptibility of young users, not only failed to implement features for limiting use or warning parents, but also took deliberate advantage of that vulnerability by utilizing "strategic timing and clustering of notifications to lure back users" and by implementing "barriers to the deactivation and deletion of accounts."

Unlike the dissent, though, I do not think that the complaints sufficiently allege that the shooter's actions were a reasonably foreseeable consequence of the defendants' decisions about how to design and operate their social media platforms. In this respect, I find the claims before us quite distinct from the cases cited by the dissent that have allowed products liability claims premised on the addictiveness of social media platforms to proceed (*see id.* at 36 n 11). I have little doubt that a plaintiff could allege a sufficient connection between the design of a platform and adverse consequences for the mental

health of young users. In those cases, the harms that form the basis for the claims—for example, the alleged inducement of "compulsive use among young users to the detriment of their health and well-being" (*Commonwealth v Meta Platforms, Inc.*, 497 Mass 384, 388 [2026])—flow *directly* from the platforms' allegedly defective features, leaving little question "that the defective design was a substantial factor in causing plaintiff's injury" (*Hoover v New Holland N. Am., Inc.*, 23 NY3d 41, 54 [2014]). But the plaintiffs here are not bringing a claim on behalf of users. Instead, they are seeking recompense for the victims of a crime committed by a social media user. In other words, the allegedly addictive properties of the platforms were not alleged to have harmed the plaintiffs here directly, but rather to have harmed *the shooter*, who in turn engaged in extensive research and planning before murdering ten people and wounding others. Even acknowledging a plaintiff's minimal pleading burden at the motion to dismiss stage, I do not see the connection between the two as sufficiently articulated to allow the case to proceed.

Three aspects of these claims inform my conclusion. First, although intervening criminal acts do not necessarily sever the causal chain, the shooter's conduct was apparently painstakingly planned and extraordinarily violent. Second, the prominence of content in many of plaintiffs' allegations gives me real pause. Even if we were to interpret section 230 as not immunizing defendants against claims for actions that rest, at least in part, on content, I am not aware of other instances where a court has held that provocative content proximately caused someone to commit a violent crime, and I am hesitant to take

that step here[1] (*cf. e.g. Zamora v Columbia Broadcasting Sys.*, 480 F Supp 199, 201-203 [SD Fla 1979]; *Crosby v Twitter, Inc.*, 921 F3d 617, 624-626 [6th Cir 2019] [no proximate cause under the Anti-Terrorism Act]). Third, the defendants' platforms have billions of worldwide users. To the extent that proximate cause could rest on a correlation between social media use and a specific type of harmful act committed by any one of those users, the potential liability would sweep broadly, to say the least. If all such conduct were "a natural and foreseeable consequence" of a platform's design choices, the concept of proximate cause would have little meaning.

As for section 230, we addressed the scope of that provision fifteen years ago in *Shiamili v Real Estate Group of N.Y., Inc.* (17 NY3d 281 [2011]). There, "we read section 230 to bar 'lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions' " (*id.* at 289, quoting *Zeran v America Online, Inc.*, 129 F3d 327, 330 [4th Cir 1997]). The plaintiffs in *Shiamili* conceded that their claims "s[ought] to hold the defendants liable as publishers and speakers" (*id.* at 290; *see* brief for plaintiff-respondent, available at 2009 WL 8073984, *15-16). Our decision thus focused not on whether the defendants should be treated as publishers under the traditional editorial functions test, but instead on whether the defendants' actions related to reposting certain comments rendered them "content providers" (*see id.* at 290-293). Because we concluded

[1] I understand the plaintiffs to disclaim on appeal any effort to base liability on defendants' roles as publishers of content (*see* dissenting op at 28-29, 35-36). But their complaints can be read to allege that the platforms are defective at least in part because of the racist and extremist content they make available, and the plaintiffs acknowledge that content is a necessary link in the causal chain leading to their harms.

that defendants' actions did not make them content providers, we affirmed dismissal of the complaint under section 230 (*id.* at 293).

Our endorsement of a "traditional editorial functions" test for section 230 immunity, however, does little to answer whether the conduct of modern social media platforms can be labelled such a function. As to claims that a defendant designed its platform features to encourage or facilitate addiction, irrespective of the particular content promoted by the platform, I agree with the dissent that they are not barred by section 230 (*see* dissenting op at 29). That is because such conduct does not constitute a traditional editorial function, even under a broad understanding of that term (*see e.g. Lemmon v Snap, Inc.*, 995 F3d 1085 [9th Cir 2021]; *Commonwealth*, 497 Mass 384).

As to claims that challenge a social media platform's use of content-recommendation algorithms, the dissent appears to take the view that content-recommendation algorithms which are designed to be addictive are not covered by section 230 immunity, since they increase engagement in a way that could not have been envisioned at the time that provision was enacted in 1996 (*see* dissenting op at 29-30). I have no quarrel with how we framed the scope of section 230 in *Shiamili*: the key question is whether a platform engaged in a traditional editorial function, akin to a decision "to publish, withdraw, postpone or alter content" (17 NY3d at 289, quoting *Zeran*, 129 F3d at 330). But whether platforms' use of content-recommendation algorithms can be said to resemble traditional decisions to publish, withdraw, postpone, or alter content is, for me, a more difficult question.

At the outset, I agree with the dissent and with Chief Judge Katzmann's observation in *Force v Facebook, Inc.* (934 F3d 53 [2d Cir 2019, Katzmann, Ch. J., concurring in part and dissenting in part]) that overly broad interpretations of section 230 in the face of a rapidly changing technological landscape are unmoored from Congress's purpose in enacting that provision—to protect minors from being exposed to pornography online (*see id.* at 78; *see also* dissenting op at 30). Congress considered "two alternative ways of handling this problem" (*Force*, 934 F3d at 78 [Katzmann, Ch. J.]). One option was the Exon Amendment, proposed in the Senate, which would have had "the FCC regulate online obscene materials" (*id.*). A second option, proposed in the House, was the Cox-Wyden Amendment, which instead "sought to empower interactive computer service providers to self-regulate, and to provide tools for parents to regulate, children's access to inappropriate material" (*id.* at 78-79). The drafters of that amendment, which would become section 230, meant to abrogate the rule set forth in *Stratton Oakmont* (*id.* at 79) so that website operators "exercis[ing] editorial control over the content" on their sites would not be subject to liability as publishers (*Stratton Oakmont, Inc. v Prodigy Servs. Co.*, 1995 WL 323710, *2, 1995 NY Misc LEXIS 229, *3 [Sup Ct, Nassau County 1995]; 141 Cong Rec H8470 [Aug. 4, 1995] [statement of Rep. Cox] [stating that the amendment "will protect computer Good Samaritans, online service providers, . . . who take( ) steps to screen indecency and offensive material for their customers . . . from taking on liability such as occurred in the (*Stratton Oakmont*) case in New York" and "establish as the policy of the United States that we do not wish to have content regulation by the Federal Government (via the FCC) of what is on the Internet"]). That is not to say that section 230 is limited to

the regulation of obscene material; after all, the text contains no such limitation. But "[i]lluminating Congress's original intent does . . . underscore the extent of [section] 230 (c) (1)'s subsequent mission creep" and indicate that "caution is warranted before courts extend [its] reach any further" (*Force*, 934 F3d at 80 [Katzmann, Ch. J.]).

Given that caution, I would not be inclined to extend section 230's reach to all content-recommendation algorithms. I am particularly skeptical that use of individualized content-recommendation algorithms—that is, algorithms that "assess[ ] a user's prior posts, friends, or viewing habits to recommend new content and connections"—constitutes a traditional publisher function (*Gonzalez v Google LLC*, 2 F4th 871, 914 [9th Cir 2021, Berzon, J., concurring]). After all, "[t]raditional publication has never included selecting the news, opinion pieces, or classified ads to send to each individual reader based on guesses as to their preferences and interests" (*id.*). Instead, such functions may be "more analogous to the actions of a direct marketer, matchmaker, or recruiter than to those of a publisher" (*id.*).

In my view, a closer question is presented as to engagement-maximizing algorithms that, unlike the algorithms described above, do not take into account any individual user's conduct but instead seek to "promote[ ] third-party content" based on "cumulative user engagement" (*Doe 1 v Meta Platforms, Inc.*, 174 F4th 1159, 1174 [9th Cir 2026, Berzon, J., concurring]). On one hand, algorithms that do not respond to individual user conduct may be thought to resemble a publisher's traditional aim of presenting content that users, on the whole, want to see (*see Force*, 934 F3d at 67 [majority opinion] [expressing doubt "that Congress intended that when publishers of third-party content become especially

adept at performing the functions of publishers, they are no longer immunized"]). On the other hand, one might conclude that "generic" content-based algorithms bear no more resemblance to traditional publication than their " 'advanced'—individualized—counterparts" because they still rely on an assessment of user viewing habits in a manner akin to "a direct marketer" rather than a traditional publisher (*Doe 1*, 174 F4th at 1174 [Berzon, J., concurring]). My dissenting colleagues offer yet another variation on this point; they assert that engagement-maximizing algorithms differ from an editor's choice of where to place a news story because the algorithms are "designed to prey on neurological frailties and alter brain chemistry" (dissenting op at 30).

Whether section 230 protects any of these algorithms is, for me, a difficult question, and I do not think the record before us sheds much light on how different types of content-recommendation algorithms actually operate on the social media defendants' individual platforms—information that might affect my view. We need not decide those questions today because, whatever the scope of the "traditional editorial functions" protected by section 230, the plaintiffs have failed to sufficiently allege that the defendants' platforms' features caused their grave injuries.

RIVERA, J. (dissenting in part):

Plaintiffs are the victims of a white supremacist mass shooting in Buffalo, New York and their relatives and legal representatives. The shooter was motivated by racist beliefs that promote violence against nonwhites. He did not know and did not want to know

his victims. Instead, he was of one mind the day of the shooting: kill as many Black people as his ammunition could reach and inspire others to take similar action. By his own admission, the shooter was indoctrinated into this violent, racist ideology through his addictive use of social media. Plaintiffs sued several defendants, including social media corporations, who allegedly facilitated the descent of a teenager into a murderer armed with deadly weapons and driven by boundless racial hate.

Defendant social media corporations are not immune to suit, as they claim, under the Communications Decency Act of 1996 (47 USC § 230). The text and legislative history establish that Section 230 only prohibits suit against information content providers when they serve as mere conduits of third-party content, or when the providers regulate a users' access to obscene, excessively violent and other objectionable material. Section 230 does not foreclose liability for a social media company's own tortious actions, including designing a defective product and failure to warn of their products' inherent danger to vulnerable users or the public at large. Here, under our State's liberal pleading standards, plaintiffs have sufficiently alleged that several of the defendant social media corporations designed an addictive product that proximately caused their damages. No federal or state law requires that we slam the courthouse door on plaintiffs' claims.

Unlike the majority, that affirms dismissal of plaintiffs' complaints, ending this litigation at the motion to dismiss stage, I would reverse and reinstate the adequately pleaded tort claims against the social media defendants. I dissent.

I.

The day began as just another springtime Saturday in Buffalo. Several people were doing their shopping at a local supermarket when that ordinary day turned tragic. An 18-year-old White male armed with a semi-automatic rifle walked into the supermarket and opened fire, with the specific and documented intention of killing as many Black people as he could. He had chosen this particular store intentionally; according to the United States Census Bureau, 64% of the residents in this neighborhood identified as Black or African-American.[1] In total, the shooter killed 10 Black customers, employees, and community members, and injured three more victims—two White, one Black—before he was arrested. The survivors, their families, and all of Buffalo were forever changed by this horrific act of racial violence.

Victims and their relatives—some survivors of the shooting, some representatives of the deceased—filed four separate lawsuits (*see Patterson v Meta Platforms, Inc.*, Sup Ct, Erie County, May 12, 2023, index No. 805896/2023; *Salter v Meta Platforms, Inc.*, Sup Ct, Erie County, July 12, 2023, index No. 808604/2023; *Jones v Mean LLC*, Sup Ct, Erie County, Aug. 15, 2023, index. No. 810316/2023; *Stanfield v Mean LLC*, Sup Ct, Erie

[1] *See* United States Census Bureau, Zip Code Tabulation Area for 14208, (2020), available at https://data.census.gov/profile/ZCTA5_14208?g=860XX00US14208#race-and-ethnicity (last accessed Nov. 11, 2026).

County May 15, 2023, index No. 810317/2023).[2] Plaintiffs sued various social media corporations and their subsidiaries, along with weapons manufacturers and the parents of the lone shooter. The remaining social media defendants are Meta Platforms, Inc., Instagram, LLC, Snap, Inc., Alphabet, Inc., Google, LLC, YouTube, LLC, and Reddit, Inc. (collectively, "social media defendants").

As relevant to these appeals, plaintiffs asserted state law claims sounding in products liability, negligence, intentional infliction of emotional distress, wrongful death, privacy violations, public nuisance, and unjust enrichment arising from the alleged dangers of the social media defendants' highly addictive social media products, especially to vulnerable populations like teenagers. Plaintiffs requested damages and equitable relief, including changes to the algorithms' addictive elements and appropriate warnings of the dangers of compulsive social media use.

II.

A.

The complaints detail the shooter's transformation from a seemingly ordinary teenager into a virulent racist and violent white supremacist. Following the attack, investigators discovered entries in the shooter's digital diary in which he wrote that he had been inspired by other racially-motivated hate crimes and mass shootings (*see* Office of

[2] For ease of reference, I refer to the operative complaints in these separate actions as the "complaints."

the New York State Attorney General Letitia James, *Investigative Report on the Role of Online Platforms in the Tragic Mass Shooting in Buffalo on May 14, 2022*, at 9, 17-19 [Oct. 18, 2022] [hereinafter the "AG Report"]).[3] The shooter, through a camera strapped to his helmet, livestreamed his movements and the massacre inside the supermarket on the private messaging service Discord and the public platform Twitch—mimicking the camera angles of first-person shooter video games. By publishing a written manifesto and broadcasting his shooting, emulating the methods of a prior mass shooter and other white supremacists, the shooter aimed to "situate himself within that tradition . . . [and] build his legacy and pave the way for others to follow in his footsteps" (AG Report at 20). The shooter also wrote that he "was not born racist nor [did he] gr[o]w up to be racist." Rather, he was exposed to and indoctrinated in his ideology of racial violence after using various social media platforms, starting with Instagram, YouTube, and Snapchat in his early teen years, before he transitioned to more niche platforms like Reddit, Discord, Twitch and 4chan. The shooter claimed he quickly "became transfixed with and addicted to [the] online world." He wrote in his diary:

[3] On May 18, 2022, Governor Kathy Hochul issued a referral pursuant to Executive Law § 63 (8) asking Attorney General Letitia James to "investigate the specific online platforms that were used to broadcast and amplify the acts and intentions of the mass shooting that took place in Buffalo on May 14, 2022 and determine whether specific companies have civil or criminal liability for their role in promoting, facilitating, or providing a platform to plan and promote violence" (*see* Letter from Governor, May 18, 2022, available at https://www.governor.ny.gov/sites/default/files/2022-05/Executive_Law_63_Referral.pdf [last accessed Nov. 11, 2026]). In response, the Attorney General prepared the aforementioned report documenting her investigation, which plaintiffs incorporated by reference in the complaints.

> "*I'm addict[ed] to consooooming*. It's 2 in the morning. w[hat] t[he] f[*ck] . . . I'll admit my mental health has seriously degraded these past few years, especially in the last few months. I should be sleeping right now. I'm just browsing online :/" (emphasis added).

By his own account, he sacrificed "years of [his] life" to being online, often "stay[ing] up late" "browsing Reddit or watching YouTube" "every day." He stated that his compulsive social media use "seriously degraded" his mental health and isolated him from his peers. Rather than "go[ing] to friend's houses" or other social gatherings, "[e]very day after school [he] would just go home and play [video] games and watch YouTube, mostly by [him]self." Ultimately, as he descended further into isolation, he believed he had no other choice but to commit this barbarous act.

Plaintiffs allege that the shooter's experience of compulsive social media engagement is widespread because the products' addictive features are fundamental to the social media defendants' business model.[4] According to plaintiffs, defendants' business models seek to maximize user engagement through products "designed to be addictive." Plaintiffs assert that the operation of these products on the shooter, and their adverse impact on his mind caused by their addictive features, are links in the proximate causal chain underlying plaintiffs' tort liability causes of action against the social media defendants.

B.

[4] The complaints explain that engagement refers to the measure of user time, attention, and interaction on social media platforms that companies intentionally seek to maximize through algorithmic design in order to drive advertising revenue.

In support of plaintiffs' addictive product theory of liability, the complaints cite various studies which explain the carefully engineered neurological impact of social media products. The complaints allege that using social media products "can release large amounts of dopamine into a user's brain's reward pathway," just like other addictive substances (*see e.g.* Jim Zhao, *et al.*, *Risk Factors Associated with Social Media Addiction: An Exploratory Study*, Frontiers In Psychology [Apr. 14, 2022]; Bruce Goldman, *Addictive potential of social media, explained*, Stanford Medicine Scope [Oct. 29, 2021]; Jena Hilliard, *New Study Suggests Excessive Social Media Use Is Comparable to Drug Addiction*, Addiction Center [Sept. 4, 2019]). Further, that social media use provides the brain's ventral striatum with " 'a dopamine and oxytocin rush [that occurs] whenever we experience social rewards' " (*see e.g.* Zara Abrams, *Why young brains are especially vulnerable to social media*, American Psychological Association [updated Aug. 25, 2022]). The complaints explain that the ventral striatum, which sits alongside the ventral pallidum, underlies the prefrontal cortex. Collectively, these regions of the brain are responsible for motivating action and regulating instinctual behavior. In other words, the complaints allege that social media use directly impacts the regions of the brain most responsible for the actions we take and the judgment motivating or restraining those actions.

The complaints further expound upon social media's particular impact on young people, like the shooter. During adolescence and early adulthood, the human brain undergoes significant neurological maturation that coincides with broader psychosocial development. The prefrontal cortex—the region responsible for impulse control, risk assessment, emotional regulation, and executive decision-making—is among the last areas

of the brain to fully mature. Throughout childhood and adolescence, this structural development is driven by two main processes: myelination, which insulates neural pathways with fatty tissue to enhance communication speed, and synaptic pruning, which eliminates unused neural connections to increase brain efficiency. Although these structural changes gradually strengthen executive functions and risk evaluation, crucial aspects of brain development remain incomplete through late adolescence and early adulthood, leaving young people uniquely vulnerable in their capacity to regulate impulses and weigh long-term consequences.

As the complaints further describe, "[y]oung people are more highly susceptible to social media addiction than older adults[,]" and those aged "16 to 25 have the highest rates of social media-related mental illness." That is because "[t]he human brain is still developing during adolescence in parallel to adolescents' psychosocial development." Indeed, "[i]n late adolescence, important aspects of brain maturation remain incomplete, particularly those involving the brain's executive functions and the coordinated activity of regions involved in emotion and cognition." This neurological immaturity results in the "demonstrated behavioral and psychosocial immaturity of juveniles," as the regions of their brains responsible for "control of impulses and emotions and mature, considered decision-making" are still undergoing development. According to the complaints, social media platforms exploit young users' neurological and psychosocial immaturity by providing users with and encouraging instant gratification, impulsive reactions, and novelty seeking—all in service of maximizing compulsive social media use.

The complaints cite extensive research on the quantity and quality of social media use that has shown an association between social media use and depression in adolescents. Specifically, social media platforms encourage users to prioritize their apps as their primary means for social interaction, decreasing young users' incentive and opportunity to participate in the vital face-to-face interactions that promote the development of social skills. The complaints cite studies showing that adolescents who spend more than three hours per day using social media are at a heightened risk for mental health problems, poor mental health, or poor well-being, which are often exacerbated by social isolation. People who report spending more than two hours per day on social media were twice as likely to perceive themselves as socially isolated than those who said they spent a half hour per day or less on those platforms. According to the complaints, "[a]ddicted users are ensnared into psychological rabbit holes," wherein their "prolific use of social media isolate[s]" them and makes them more prone to continue turning to social media for connection, furthering their isolation and psychosocial deterioration.

Plaintiffs emphasize this "feedback loop," its impact on the shooter, and the loop's commercial value to these defendants. The complaints allege that, in this case, algorithmic "echo chamber[s]" ensnared the shooter. The feedback loop provides economic benefit to the social media defendants because "[a] user's addiction to these products is an essential component of the monetary success of social media . . . addictive engagement leads to maximized profits."

C.

As to causation, the complaints allege that the effect of the addictive social media products on the shooter's mental health was a proximate cause of the shooting and their injuries. The complaints recount the shooter's own description of what led him to commit mass murder, directly implicating the social media defendants' addictive products.

According to the shooter, before he reached his teenage years, he did not hold racist beliefs and did not grow up in a "racially prejudiced household or a racially polarized community." His thoughts changed as his social media use increased and became uncontrollable. As the algorithms fed him progressively more violent and barbaric content, the shooter's interests "progress[ed] to livestream videos of mass shootings and other extreme depictions of violence . . . because his dopamine response mechanism had become satiated to less violent material." The complaints allege that "[t]he neurological satiation process" the shooter experienced mirrored the "growing depravity" of his mind as he became ever more "desensitized to the murder [and] carnage he was viewing," and fantasizing about. The thought of the attack itself became unreal to him; he wrote in his diary that he had "been going through the[ ] days barely feeling anything. This attack is just something I'm going to do and I really don't feel any emotions connected to it." The complaints allege that the "erosion of [the shooter's] moral conscience and his desensitization to acts of murderous violence was the foreseeable consequence of the design and operation of defendants' social media products."

III.

The complaints describe the alleged role of each defendant and the means by which each is a link in the chain of proximate causation chain that led to the mass shooting. [5] With respect to the social media defendants, the complaints allege as follows:

- **Meta Platforms, Inc. (Facebook & Instagram).** Meta operates Facebook and Instagram, two of the world's most ubiquitous social media products, and both platforms generate revenue primarily by selling targeted advertising based on users' attention and behavioral data. Plaintiffs allege that Meta deliberately designed its platforms by embedding addictive architectural features—including engagement-maximizing recommendation algorithms, infinite scrolling, relentless push notifications, and social-validation metrics including "likes" and view counts—specifically engineered to exploit adolescent neurobiology and extract behavioral data.[6] The complaints also allege Meta fails to implement effective age restrictions and adequate parental controls. The complaints detail how Meta's algorithms favor content that provokes strong reactions, including more extreme material, and that Instagram's "Explore" page can steer teenage boys toward racist and white supremacist content they never sought, a progression the complaints describe as a pipeline into extremist communities. Plaintiffs allege that Meta knew of these harms, citing leaked internal documents showing awareness that Instagram worsened anxiety and depression in adolescents, yet prioritized profit. Furthermore, internal company records cited in the complaints demonstrate that Meta leadership launched and maintained its unmoderated livestreaming feature ("Facebook Live") despite explicit, repeated

[5] Not relevant to these appeals, plaintiffs also brought suit against weapons manufacturers Mean LLC, RMA Armament, Inc. and Vintage Firearms LLC, for various claims sounding in negligence, including their alleged failure to keep the shooter from obtaining their firearms and tactical equipment, and their failure to implement safeguards to prevent the shooter from modifying their weapons to enhance their lethality. Plaintiffs also sued the shooter's parents, alleging, *inter alia*, that they failed to exercise reasonable care by not intervening in their son's escalating mental health crisis or acting to disarm him as he accumulated weapons. On this appeal, we are concerned solely with the social media defendants.

[6] Infinite scroll on Instagram is a feed design that continuously loads new posts as you swipe or scroll down, so there is no natural stopping point, and the *Salter* complaint alleges this is one of Instagram's most addictive features because the uncertainty of what the next post will show keeps users scrolling subconsciously. A push notification is a short alert that a cell phone app sends to a user's device, appearing on the lock screen or as a banner even when the app is closed, to prompt the user to open it or take an action.

warnings from internal policy teams that the product would be weaponized to broadcast self-harm, mass murder, and violent extremism. The complaints allege that video of the massacre was uploaded to Facebook, and Facebook permitted the video to be viewed over a thousand times before removal. Facebook allegedly displayed the footage next to advertisements, monetized related searches, and recommended search terms about the video as "popular now," and its algorithm continued to recommend the video to users afterward.

- **Alphabet Inc. & Google LLC (YouTube).** Alphabet and its subsidiary Google (together with YouTube, LLC in the *Salter* Action) operate YouTube, a video-sharing platform, that earns revenue primarily by selling advertising, so more users and more time on the site mean more advertising sales. The complaints allege that Alphabet set a company-wide goal of one billion hours of daily viewing and pursued it by adding a recommendation feature paired with autoplay. According to the complaints, YouTube's design features exploit known cognitive processes to induce compulsive use. YouTube directs conditioning through likes, comments, subscriptions, auto-play default settings, persistent push notifications, and side-panel "Up Next" feed recommendations designed to trigger neurochemical reward pathways and induce compulsive use among children and teenagers. Its recommendation algorithm is a deep-learning neural network optimized for watch time and updated multiple times a month, and the complaints allege it drives more than 70% of the time users spend on the platform. YouTube's algorithmic model is defectively designed because it optimizes user engagement by directing viewers down radicalizing content rabbit holes containing violent, sexual, self-harm related content, which then becomes a model for further recommendations. Regarding the causal nexus to the attack, the complaints allege that YouTube served as a primary mechanism for radicalizing the shooter, repeatedly serving him violent material and tactical inspiration in the weeks leading up to the Buffalo supermarket mass shooting. They also allege that Alphabet monetized white supremacist content through shared advertising revenue and ignored internal warnings from employees about extremist content.

- **Reddit, Inc.** Reddit operates a discussion and news aggregation platform organized into interest-based "subreddits," or subpages, using engagement algorithms—such as "hot ranking" and "confidence sort"—alongside user "upvoting" to dictate content visibility. The complaints allege that Reddit's design encourages compulsive use through easily accessible, personalized content and an upvote and "karma" system that creates a feedback loop of validation. Reddit's design and alleged historically lax moderation policies help extremist subcultures organize themselves and algorithmically elevate incendiary, violent, and anti-semitic content to drive user traffic. Reddit directly facilitated the shooter's radicalization through subreddits dedicated to the "great

replacement theory," eugenics, and tactical gear modifications. While planning the attack, he was active in subreddits devoted to tactical gear and ammunition, where he mostly exchanged information on the pros and cons of body armor and ammunition and sought advice on tactical gear. Additionally, Reddit failed in its post-attack duties by allowing the links to the shooter's manifesto and his supermarket attack footage to stay on the platform, taking an average of eight days to respond to formal demands from the New York Attorney General to remove this material.

- **Amazon.com, Inc. & Twitch Interactive, Inc. (Twitch).** Amazon owns and operates Twitch, a real-time livestreaming service popular among teenagers that monetizes continuous viewer engagement through advertising and paid subscriptions. Under its terms of service and legal architecture, Twitch retains exclusive copyright ownership over all livestreamed content for the first 24 hours following broadcast. The complaints allege that Twitch is defectively designed and inherently dangerous because it allows immediate, unmoderated livestreaming without an artificial broadcast delay, despite Amazon's actual knowledge that the platform is routinely utilized to stream violent crimes and self-harm. In this case, the shooter used Twitch's livestream capability to broadcast his attack in real time, creating media that rapidly spread across the internet and continues to serve as propaganda and motivation for violent extremists.

- **Snap Inc. (Snapchat).** Snap Inc. designs and operates Snapchat, a visual messaging application centered around ephemeral media ("Snaps") that disappear after viewing, targeted heavily at adolescents and young adults. To sustain an ad-driven revenue model dependent on active daily participation, Snap intentionally incorporates features designed to maximize psychological compulsion and brand addiction in minor users. Features such as "Snapstreaks," invasive push notifications, and rapid messaging expectations exploit adolescent brain development by manipulating social-reciprocity anxieties and reward mechanisms.[7] Snap defectively prioritized engagement metrics over minor safety by failing to implement basic safety safeguards, age verification, or parental controls, while failing to warn users and parents of severe risks including severe mental health degradation, exposure to harmful material, and interactions with dangerous actors. Snap contributed to the shooter's overall

[7] A Snapstreak is a tally that tracks the number of consecutive days two users have exchanged snaps, and Snapchat uses push notifications to nudge users to keep their Snapstreaks alive, typically with alerts that a streak is about to expire, which creates pressure to open the app and send a snap daily.

social media addiction, acting as the gateway drug towards more intensely addictive behavior.

- **Discord Inc.** Discord operates an instant messaging and voice platform structured around private, invite-only spaces known as "servers." Because Discord servers are private by default and support user anonymity, the platform's product architecture creates an unmoderated, opaque environment that facilitates—among other things—the recruitment, radicalization, and operational planning of white supremacist and neo-Nazi groups out of view of law enforcement. Discord holds a direct causal nexus to the Buffalo shooting because the shooter used a private Discord server for months as a personal planning repository to record his white supremacist ideology, log tactical gear research, and detail his attack strategy. Minutes before the attack, the shooter distributed invitation links to his private Discord server, broadcasting his diary, manifesto, and Twitch livestream link to public audiences.

- **4chan, LLC & Good Smile Company, Inc. (4chan).** 4chan, LLC operates an anonymous imageboard structured into thematic boards where content visibility is driven by the frequency of the user's reply ("bumping") before material is automatically purged.[8] 4chan is defectively designed because it functions entirely without user registration or account tracking, establishing absolute anonymity that systematically fosters a sanctuary for white supremacist radicalization, hate speech, and violent criminal planning without law enforcement oversight. Defendant Good Smile Company, Inc. maintains a 30% active management interest in 4chan, providing operational support and financial capital that maintains the site's infrastructure despite actual knowledge of its link to domestic terrorism and hate crimes.

IV.

The social media defendants moved to dismiss the complaints against them pursuant to CPLR 3211 (a) (7) for failure to state a cause of action. Defendants maintained that they are shielded from plaintiffs' lawsuits under Section 230 of the Communications Decency

[8] An anonymous imageboard is an online forum, organized into topic-specific boards and built around threads of image-and-text posts, where users can post without registering an account or using a persistent identity (typically appearing under a default name like "Anonymous").

Act of 1996 and the First Amendment. Plaintiffs countered that while the racist content is protected speech under the First Amendment and Section 230 bars a social media corporation's civil liability for publication of such content, their tort claims fall outside Section 230's protection. Plaintiffs argued that the complaints allege social media defendants' liability based on their defective product design, not on their role as publishers of racist content. Supreme Court denied the motions, concluding the complaints sufficiently pleaded viable products liability causes of action. The court also held that it was "far too early to rule as a matter of law" that the action or inaction of the platforms, or the shooter's intervening criminal acts, necessarily defeated plaintiffs' theories of harm.

The Appellate Division reversed and dismissed the complaints in a 3-2 decision (*see Patterson v Meta Platforms, Inc.*, 244 AD3d 29 [4th Dept 2025] [Appeal No. 1] [setting forth the memorandum opinion adopted in all appeals]; *see also Jones v MEAN LLC*, 240 AD3d 1394 [4th Dept 2025] [Appeal No. 2]; *Salter v Meta Platforms, Inc.*, 240 AD3d 1395 [4th Dept 2025] [Appeal No. 3]; *Stanfield v Mean LLC*, 240 AD3d 1395 [4th Dept 2025] [Appeal No. 4]; *Jones v Mean LLC*, 240 AD3d 1395 [4th Dept 2025] [Appeal No. 5]; *Stanfield v Mean LLC*, 240 AD3d 1396 [4th Dept 2025] [Appeal No. 6]). The Appellate Division concluded that social media defendants were immune from liability under Section 230 (*see Patterson*, 244 AD3d at 35-39). The majority reasoned that plaintiffs' allegations depend on the content of the material consumed by the shooter and thus the plaintiffs seek to hold social media defendants' liable for publishing third-party content (*id*. at 40). Similarly, the algorithms and other proprietary tools were "simply tools used by social

media companies 'to accomplish a traditional publishing function, made necessary by the scale at which providers operate' " (*id.* at 38).

Two Justices dissented, in part, and would have affirmed Supreme Court's denial of the respective motions to dismiss filed by the weapons manufacturers and the social media defendants (*see Salter v Meta Platforms, Inc.*, 240 AD3d 1378, 1379-1380 [4th Dept 2025] [Appeal No. 1] [denying motions to dismiss filed by defendant MEAN LLC in all four appeals]; *Patterson v Meta Platforms, Inc.*, 240 AD3d 1447 [4th Dept 2025] [Appeal No. 2]; *Jones v Mean L.L.C.*, 240 AD3d 1387 [4th Dept 2025] [Appeal No. 3]; *Stanfield v Mean L.L.C.*, 240 AD3d 1387 [4th Dept 2025] [Appeal No. 4]; *see also Patterson*, 240 AD3d at 42-50). The dissent concluded that the complaints were premised on the allegedly defective design of the platforms themselves and the concomitant failure to warn of the risks of addiction in young people, noting that the shooter repeatedly wrote of his addiction to the social media defendants' products (*Patterson*, 244 AD3d at 47-49).

V.

A.

"On a motion to dismiss, we give "the pleading . . . a liberal construction, [ ] accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]). The dispositive issue is whether the plaintiff "has a cause of action, not whether [they] ha[ve] stated one"

(*id.* at 88, quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977] [internal quotation marks omitted]). "New York's liberal pleading standard requires only that the movant be placed on notice of the legal claim asserted" (*Tax Equity Now NY LLC v City of New York*, 42 NY3d 1, 12 [2024]). "[T]he question is not whether a party will eventually prove its claim once those allegations are put to the test but whether the claim is based on a viable legal theory" (*id.* at 6–7). If, from the complaint's "four corners[,] factual allegations are discerned which taken together manifest any cause of action cognizable at law," the motion to dismiss "will fail" (*Guggenheimer*, 43 NY2d at 275).

Furthermore, "fact-laden claim[s]" are "unsuited for resolution on a pre-answer, pre-discovery motion to dismiss[,]" and courts must remain "acutely aware of the potential to decide" a matter "prematurely" (*Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018] [declining to resolve a complex commercial veil-piercing action on a motion to dismiss]). A defendant must establish, as a matter of law, that there is no basis upon which the plaintiff can succeed (*see Guggenheimer*, 43 NY3d at 276 ["the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail"]; *Rovello v Orofino Reality Co., Inc.*, 40 NY2d 633, 636 [1976] ["Modern pleading rules are designed to focus attention on whether the pleader has a cause of action" (internal quotation marks omitted)]). In sum, the CPLR was designed to be applied liberally, to identify the controversy at the pleading stage and permit its factual development thereafter, not to turn a threshold sufficiency motion into an adjudication of the merits (*Guggenheimer*, 43 NY3d at 276, citing *Foley v D'Agostino*, 21 AD2d 60, 64-

65 [1st Dept 1964] [explaining the Legislature's abandonment of the strict Civil Practice Act pleading requirements for the CPLR's liberal notice-based pleading requirements]).

B.

The legal standards applicable to products liability and failure to warn claims are similarly well established. A manufacturer, and others in the chain of distribution, may be held strictly liable for injuries caused by a defective product (*see Hoover v New Holland N. Am., Inc.*, 23 NY3d 41, 53-54 [2014] [collecting cases]). To establish liability, a plaintiff must "show that the defendant 'breached its duty to market safe products when it marketed a product designed so that it was not reasonably safe and that the defective design was a substantial factor in causing plaintiff's injury' " (*Hoover*, 23 NY3d at 53-54, quoting *Voss v Black & Decker Mfg. Co.*, 59 NY2d 102, 106-107 [1983]). A manufacturer of a defective product owes a duty to "any person" injured by it (*Codling v Paglia*, 32 NY2d 330, 342 [1973]) and, in appropriate cases, that duty extends to bystanders and third persons (*see McLaughlin v Mine Safety Appliances Co.*, 11 NY2d 62, 68 [1962]). Because whether a tortfeasor owes a duty is a policy question that balances competing socioeconomic interests (*see Tenuto v Lederle Labs., Div. of Am. Cyanamid Co.*, 90 NY2d 606, 612 [1997]), courts consider whether the defendant is in the best position to protect against the risk of harm (*see Palka v Servicemaster Mgt. Services Corp.*, 83 NY2d 579, 585 [1994]; *see also Palsgraf v Long Is. R.R. Co.*, 248 NY 339, 344-345 [1928, Cardozo, Ch. J.] ["The risk reasonably to be perceived defines the duty to be obeyed, and risk imports relation; it is risk to another or to others within the range of apprehension"]).

A product is defectively designed when it is not reasonably safe, meaning that if the defect were known at the time of manufacture, a reasonable person would conclude that its utility did not outweigh the risk of marketing it in that manner (*see Hoover*, 23 NY3d at 53-54; *Denny v Ford Motor Co.*, 87 NY2d 248, 257-258 [1995]). That determination weighs, among other factors, the product's utility to the public and to the individual user, the likelihood of injury, the availability and feasibility of a safer design, the user's awareness of the danger, and the manufacturer's ability to spread the cost of safety changes (*see Denny*, 87 NY2d at 257, citing *Voss*, 59 NY2d at 108). "It [is] for the jury to decide whether a product was not reasonably safe in light of all the evidence presented by both the plaintiff and defendant" (*Voss*, 59 NY2d at 108 [collecting cases]). Manufacturers must "warn of dangers arising from the product's 'intended use or a reasonably foreseeable unintended use" (*New York City Asbestos Litig.*, 27 NY3d 765, 788 [2016], quoting *Lugo v LJN Toys*, 75 NY3d 850, 852 [1990]). As to causation, the defect must be a substantial factor in causing the injury (*see Hoover*, 23 NY3d at 54; *Voss*, 59 NY2d at 106-107). However, the defect need only be a proximate cause, not the sole cause, and more than slight or trivial (*see Derdiarian v Felix Contr. Corp.*, 51 NY2d 308, 315 [1980] ["the plaintiff must generally show that the defendant's negligence was a substantial cause of the events which produced the injury"], citing *Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507, 520-521 [1980]; *see also* PJI 2:70; PJI 2:120). Critically, there may be more than one proximate cause of an injury (*see Scurry v New York City Hous. Auth.*, 39 NY3d 443, 444 [2023]; *Turturro v City of New York*, 28 NY3d 469, 483 [2016]).

As this Court has repeatedly emphasized, the intervening act of a third party does not automatically sever the causal connection (*see Derdiarian.*, 51 NY2d at 315; *Hain v Jamison*, 28 NY3d 524, 529 [2016]; *Kush v City of Buffalo*, 59 NY2d 26, 33 [1983]). "Liability turns upon whether the intervening act is a normal or foreseeable consequence of the situation created by the defendant's negligence. . . . If the intervening act is extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct, it may well be a superseding act which breaks the causal nexus" (*Derdiarian*, 51 NY2d at 315). Further, "questions concerning what is foreseeable and what is normal may be the subject of varying inferences, as is the question of negligence itself, [thus] these issues generally are for the fact finder to resolve" (*id.*; *see e.g. Rosebrock v Gen. Elec. Co.*, 236 NY 227, 237 [1923]; *McLaughlin v Mine Safety Appliances Co.*, 11 NY2d 62, 70 [1962]; *Derdiarian*, 51 NY2d at 315; *Kush*, 59 NY2d at 33; *Cohen v St. Regis Paper Co.*, 65 NY2d 752, 754 [1985]; *Kriz v Schum*, 75 NY2d 25, 36-37 [1989]; *Mirand v City of New York*, 84 NY2d 44, 51 [1994]; *Hain*, 96 NY3d at 529, 535; *Voss*, 22 NY3d at 737; *Mazella v Beals*, 27 NY3d 694, 705–709 [2016]).

VI.

The Appellate Division erroneously concluded that defendants are immune from plaintiffs' lawsuit under Section 230. As I discuss, Section 230 does not shield defendants from plaintiffs' products liability and failure to warn allegations grounded on allegedly

addictive products, as those claims have nothing to do with defendants' role as a third-party content publisher or as the creator of protected speech.

To properly appreciate what Section 230 does and does not protect, Congress included an express statement of policy. That statement, and the full text of Section 230 (c), make plain that Congress intended to encourage the continued development of the Internet and interactive computer and media services by protecting software providers from civil liability for their own efforts to restrict access to obscene and violent material or to enable others to restrict such material. Those legislative goals are not implicated or undermined by plaintiffs' state tort claims as limited to their allegations that the products are defectively designed and were placed in the market without appropriate warnings to parents and users.[9]

A.

In 1996, Congress enacted Section 230 of the Communications Decency Act, titled "Protection for private blocking and screening of offensive material" (*see* 47 USC § 230). In its legislative findings, Congress stated that Internet and other interactive computer services were "rapidly developing," and that these services offered "an extraordinary advance in the availability of educational and informational resources" and provided users with control over what they receive (47 USC § 230 [a] [1]). Further, these services "offer

[9] The Appellate Division properly dismissed the claims against Twitch, Discord and 4chan because the complaints fail to plead that these defendants' products are addictive. Thus, I agree with the majority to the extent it concludes that the Appellate Division's order should be affirmed as to these defendants.

a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity"—all to the benefit of society with minimum government regulation—and that society increasingly "rel[ies] on interactive media for [ ] political, educational, cultural and entertainment services" (47 USC § 230 [a] [3], [5]).

The legislative findings make plain that Congress considered the Internet and other computer services a boon to society because these services expand access to educational and informational resources, increase intellectual activity, and promote diversity of ideas. Congress sought to encourage continued progress with a two-fold strategy: minimize government intrusion into free market-driven computer services development, and promote the development of user-control technologies, especially technology that increased parental and adult control over children's online access to inappropriate material (*see Shiamili v Real Estate Group of NY, Inc.*, 17 NY3d 281, 288 [2011] [recognizing Section 230's "two parallel goals"—"promot[ing] free online exchange of ideas and . . . encourag[ing] voluntary monitoring for offensive or obscene material"], quoting *Barnes v Yahoo!, Inc.*, 579 F3d 1096, 1100 [9th Cir 2009], as amended [Sept. 28, 2009], which quoted *Carafano v Metrosplash.com, Inc.*, 339 F3d 1119, 1122 [9th Cir 2003] [internal quotation marks omitted]).

Congress made no mystery of this legislative purpose. Section 230 (b) declares "the policy of the United States" to: (1) promote the development of the Internet, computer services and interactive media; (2) preserve an unregulated free market for the Internet and other interactive computer services; (3) encourage the technological development of

maximum user control "over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;" (4) "remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material;" and (5) "ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer" (*see* 47 USC § 230 [b] [1]-[5]; *see Bittner v United States*, 598 US 85, 99 n 6 [2023] ["A preamble, purpose clause, or recital is a permissible indicator of meaning"]).

While Congress sought to ensure that the Internet and computer services would flourish, it just as firmly sought to encourage providers' efforts to restrict access to what Congress deemed objectionable material. Congress separately titled Section 230 (c) "Protection for 'Good Samaritan' private blocking and screening of offensive material"—emphasizing the importance of the private development of technological on-line controls and restrictions on particularly odious materials (*see Dubin v United States*, 599 US 110, 120-21 [2023] ["the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute"] [internal quotation marks omitted]; *see also Squadrito v Griebsch,* 1 NY2d 471, 475 [1956]).

Section 230 (c) (1), states, in relevant part, that "[n]o 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." Section 230 (c) (2) bars civil liability for any provider or user of an interactive computer service for "(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 objectionable, whether or not such material is constitutionally protected; or (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to [such] material." Section 230 (f) (3) clarifies that an information content provider is anyone "responsible, *in whole or in part*, for the creation or development of" the content (emphasis added).

The legislative history confirms this intent to encourage efforts to restrict certain content, in particular parental controls on children's access to online materials. For example, the Conference Report stated that Section 230 provides " 'Good Samaritan' protections from civil liability for providers or users of an interactive computer service for actions to restrict or to enable restriction of access to objectionable online material" (*see* S Rep 104-230 104th Cong, 2nd Sess [hereinafter "Conf Rep"] at 194). The legislators were clear that "[o]ne of the specific purposes of this section [was] to overrule *Stratton-Oakmont v. Prodigy* . . . and any other similar decisions which have treated such providers and users as publishers or speakers of content that is not their own because they have restricted access to objectionable material" (Conf Rep at 194). The legislators believed that such decisions create serious obstacles to "*the important federal policy of empowering parents to determine the content of communications their children receive through interactive computer services*" (*id.*).

In his introductory statement on the Senate floor, Senator Exon, the author and sponsor of the Act, explained:

> "The information superhighway should not become a red light district. This legislation will keep that from happening and extend the standards of decency which have protected telephone users to new telecommunications devices. Once passed, our children and families will be better protected from those who would electronically cruise the digital world to engage children in inappropriate communications and introductions. The Decency Act will also clearly protect citizens from electronic stalking and protect the sanctuary of the home from uninvited indecencies" (141 Cong Rec S1953 [Feb. 1, 1995]).

Senator Exon's subsequent statements were even more blunt and unequivocal as to the overarching goals of the Act: "The principles that I have proposed in the Communications Decency Act are simple and constitutional. Telecommunications devices should not be used to distribute obscenity, indecency to minors, or used to harass the innocent. . . . The fundamental purpose of the Communications Decency Act is to provide much needed protection for children" (141 Cong Rec S8088 [June 9, 1995]).

B.

This Court first addressed the scope of Section 230 immunity in 2011 in *Shiamili v Real Estate Group of NY, Inc.*, 17 NY3d 281 (2011). That case arose from a defamation suit brought by a realtor against a competitor and his realty group seeking to hold defendants liable for a lengthy and vitriolic anonymous comment posted on their website maligning the realtor, claiming that the defendants' elevation of the comment to a standalone post rendered the company liable for defamation (*id.* at 285-287). The Court concluded, as had several federal courts, that Section 230 "generally immuniz[es] Internet service providers from liability for third-party content wherever such liability depends on characterizing the provider as a 'publisher or speaker' of objectionable material" (*id.* at 287). Because the defendants administered and reposted on a public website content that

was created and originally posted by another party defendants had acted as mere publishers of the third-party content (*id.* at 291). Moreover, the Court reasoned that Section 230 shields defendants from liability for choices about whether to publish or report third-party content, both of which are "well within a publisher's traditional editorial function[ ]" (*id.* [internal quotation marks omitted]; *see also Doe 1 v Twitter, Inc.*, 148 F4th 635, 645-646 [9th Cir 2025] [decisions about what third-party content is disseminated are quintessentially the province of a publisher]; *Estate of Bride v Yolo Techs., Inc.*, 112 F4th 1168, 1176, 1179-1181 [9th Cir 2024] [product-liability and failure-to-warn claims that fault a service for not moderating content are barred]; *Klayman v Zuckerberg*, 753 F3d 1354, 1359 [DC Cir 2014] ["the very essence of publishing is making the decision whether to print or retract a given piece of content"]; *In re Facebook, Inc.*, 625 SW3d 80, 93-94 [Tex 2021] [a warning about third-party content is itself a form of editing], citing *Herrick v Grindr LLC*, 765 Fed Appx 586, 590 [2d Cir 2019]). Accordingly, the *Shiamili* Court concluded that defendants were immune under Section 230 from plaintiff's defamation suit (*Shiamili*, 17 NY3d at 291).

In the decades since the enactment of Section 230 and this Court's decision in *Shiamili*, there have been tremendous advancements in online technology. Digital devices, interactive products, and online services are commonplace and essential to modern living. The Internet has emerged as the "modern public square" (*Packingham v North Carolina*, 582 US 98, 107 [2017]). "Social-media platforms . . . [are] inescapable" (*Moody v NetChoice, LLC*, 603 US 707, 716 [2024, Kagan, J.]). "They structure how we relate to family and friends, as well as to businesses, civic organizations, and governments. The

novel services they offer make our lives better, and make them worse—[they] create unparalleled opportunities and unprecedented dangers" (*id.* at 716). Modern social media platforms are as far from the blog this Court encountered in *Shiamili*, as the horse and buggy is to the bullet speed train.

Social media platforms are part of daily life for people of all ages. We do not know the full impact of these advancements on human beings; however, it is evident they have already altered how we interact and behave. As Justice Kennedy rightly noted nine years ago—almost a lifetime in the constantly changing world of technology—"[w]hile we now may be coming to the realization that the Cyber Age is a revolution of historic proportions, we cannot appreciate yet its full dimensions and vast potential to alter how we think, express ourselves, and define who we want to be. The forces and directions of the Internet are so new, so protean, and so far reaching that courts must be conscious that what they say today might be obsolete tomorrow" (*Packingham*, 582 US at 105). Thus, as Congress anticipated, today's technology has progressed and brought us into a brave new digital world.

And just as Congress feared, these technological advances place children at risk. Some are obvious dangers, as recognized by Congress in 1996—such as the proliferation of obscene, violent and other inappropriate material easily available to children unless restricted by adults.[10]

[10] As amicus explain, algorithmic recommendation systems that underlie modern social media platforms identify whatever polarizing content they predict will be most likely to generate a user response and sustain engagement—be it "suicide-related," "eating-disorder," or anti-semitic content, for example—and "capitalize on vulnerabilities

Other dangers were not so apparent. Indeed, parents have suffered unimaginable loss due to their children's participation in reckless social media trends (*see e.g. Lemmon v Snap, Inc.*, 995 F3d 1085, 1087-1090 [9th Cir 2021] [wrongful death and negligent design action brought by parents of two teenage Snapchat users who suffered a fatal car accident while participating in the 'Speed filter' trend]; *Anderson v TikTok, Inc.*, 116 F4th 180, 183–84 [3d Cir 2024] [strict products liability and negligence suit brought by mother of ten-year-old girl who accidentally self-asphyxiated while attempting the TikTok 'Blackout Challenge']). And as plaintiffs allege in their complaints, the social media defendants intentionally design their products to foster excessive and frequent usage among adolescents. In sum, plaintiffs allege these products are designed to induce addictive, time-wasting loops that prioritize sensationalism, that ultimately led the shooter down a dangerous path towards violent behavior.

C.

To the extent plaintiffs' claims against the social media defendants are based upon defendants' publication of third-party content, including racist, white supremacist, and violent content, defendants are immune from suit pursuant to Section 230. However, not *all* claims asserted in the complaints are based upon defendants' publication of third-party

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expressed by the user" to capture and control their attention (*see* brief for amicus curiae Center for Countering Digital Hate, available at https://courtpass.nycourts.gov/Public_search [hereinafter CCDH Brf], at 20-22). At times, these algorithmic recommendations operate without any "searching, requesting, or subscribing by the user." (*id.* at 22). And they operate with incredible speed—studies have shown that new accounts on one platform were served suicide-related content within 2.6 minutes of scrolling the app's "For You" page (*id.* at 20).

content. Rather, as I explain, the complaints also stated causes of action based on defendants' design of allegedly defective products and failure to warn.

Plaintiffs assert that these defendants are civilly liable for their role in addicting the shooter to social media and consequent deterioration of his mental health. Plaintiffs' complaints set forth the entire chain of causation that allegedly led to the mass shooting. By designing highly addictive algorithms known to cause severe mental harm to teenagers—like the shooter—the social media defendants created a direct link to the resulting damages, particularly given their failure to warn users and parents of these risks.

Plaintiffs state claims that are not based upon the third-party content displayed on these defendants' platforms. The harm inflicted by the racist and violent content consumed by the shooter falls on the shoulders of the third-party creators of that content. Plaintiffs did not sue the authors of the hate-filled, white supremacist text and ideology, and they concede that this despicable content is nonetheless protected speech. But there is no Section 230 immunity that attaches to the architecture of defendants' social media products—particularly their purposefully addictive algorithms.

Section 230 protects a provider's publication and creation of content, as well as "editorial" decisions concerning the display of that content (*Shiamili*, 17 NY3d at 291). But according to allegations in the complaints, which we must accept as true at this stage of the litigation, the defendants' products are defectively designed for reasons distinct from the third-party content those products publish. The complaints allege that defendants' products are designed to exploit human psychology to alter users' behavior and increase engagement, making them unable to stop looking at their screens. This is not the digital

equivalent of a newspaper editor choosing where to place a news story, op-ed piece or advertisement to catch the reader's attention. Instead, according to plaintiffs, the social media platforms are designed to prey on neurological frailties and alter brain chemistry, regardless of content, and are exponentially more dangerous to children's brains. As the complaints allege, the algorithms do this by affecting the chemistry of the brain—providing a "dopamine hit" that causes compulsive behavior that leads to adverse emotional and physical outcomes.

Congress certainly did not envision modern social media platforms when it enacted Section 230 in 1996. But by enacting Section 230 with its limited immunity for "Good Samaritan" private monitoring of the internet and interactive computer services, Congress sought to protect children from certain harmful online materials, by empowering providers to develop and implement technologies that enable parents and adults to restrict children's online viewing. Plaintiffs' claims do not undermine that fundamental legislative purpose. To the contrary, the litigation here furthers the goals of Section 230 by seeking to hold the social media defendants accountable for their alleged defectively designed product and failure to warn parents and adults of the defendants' products' capacity to affect the brain and thus change children's behavior for the worse.

VII.

Defendants' alternative argument that the complaints were properly dismissed on First Amendment grounds is unpersuasive. At this pre-answer stage of the litigation, it is

unclear how precisely the content-recommendation algorithms function, meaning it is not possible to determine, as a matter of law, on a motion to dismiss that the algorithms themselves are protected speech. That determination requires factual findings dependent on future discovery. On a motion to dismiss we only decide whether the plaintiffs' claim is cognizable and not whether it will eventually succeed based on the facts established by the record (*see Cortlandt St. Recovery Corp.*, 31 NY3d at 47-49 [a court must remain "acutely aware of the potential to decide" a matter "prematurely" on a motion to dismiss]; *111 W. 57th Inv. LLC v 111 W57 Mezz Inv. LLC*, — NY3d 2026 —, — NY Slip Op 03376, *7 [2026] ["on a motion to dismiss the court merely examines the adequacy of the pleadings" (internal quotation marks omitted)]).

The United States Supreme Court's decision in *Moody v NetChoice, LLC* (603 US 707 [2024]) supports that conclusion. In *Moody*, the Supreme Court held it could not decide the facial First Amendment challenges to laws regulating internet platforms without understanding how the laws at issue would apply to the various platforms and their numerous features (*see id.* at 723-726). Notably, the Court reserved the question of how to deal with platforms "whose algorithms respond solely to how users act online—giving them the content they appear to want, without any regard to independent content standards." (*id.* at 736 n 5). The Court has not yet weighed in on that question. Thus, to the extent defendants' motions to dismiss rely on the First Amendment, they failed to carry their burden.

VIII.

The majority affirms the Appellate Division's alternative holding that the complaints failed to adequately allege that the shooter's addiction to social media was a proximate cause of the mass shooting (*see* majority op at 1-4; *Patterson*, 244 AD3d at 40-41). That conclusion is contrary to our liberal pleading standard and causation principles.

The complaints allege that the social media defendants designed additive algorithms, constituting a defective product, and that the shooter's behavior was affected by that defective product. The latter point is borne out by the shooter's own statements. The shooter's diary is replete with his constant, daily struggle to disconnect from digital media, as he wrote: "I'm having a really hard time thinking right now. *Why do I always have trouble putting my phone down at night?*" "*I'm a literal addict to my phone. I can't stop consooming.*" "It's not that I actually dislike other people. . . . *I've probably spent actual years of my life just being online. And to be honest I regret it*." The complaints allege that as a result of the shooter's addiction he "was convinced and motivated to commit the heinous killings."

The complaints further allege that the social media defendants breached their duty to warn users and parents of the risks of addiction, indoctrination, radicalization, mental illness "and instigation of violent behavior presented by their respective products." Finally, the complaints conclude that the social media defendants' tortious conduct, was a proximate cause of plaintiffs' injuries. In other words, plaintiffs claim that the defendants' defective products were crucial causal links leading to this barbarous attack—one that sought to terrorize African-Americans in Buffalo and throughout the country. At the

motion to dismiss stage, plaintiffs' allegations adequately plead the proximate cause element of the products liability and failure to warn claims.

The majority's conclusion that plaintiffs "fail to establish that the shooter's actions were a natural and foreseeable consequence" of the social media defendants' platforms because "the shooter's actions were so extraordinary as to sever the causal chain as a matter of law" is unsupported by our well-established tort liability doctrines (majority op at 4). First, we have made clear that there may be more than one link in a causal chain and there may be more than one tortfeasor liable, jointly or individually, for a plaintiff's injuries. "[T]he mere fact that other persons share some responsibility for [the] plaintiff's harm does not absolve [a] defendant from liability" (*Hain*, 28 NY3d at 529-530). Thus, the fact that the third-party content creators may bear responsibility for the harm does not mean that defendants bear none.

Second, a defect need only be a "substantial cause"—not the sole cause—"of the events which produced the injury" (*Hain*, 28 NY3d at 528-529 [internal quotation marks omitted]). Substantial means more than slight or trivial. Plaintiffs' allegations that defendants' product adversely affected the shooter's mental health and behavior, making him a compulsive social media user, with the attendant negative impact on his mind and body, isolated from others, rendering him more susceptible to commit this horrific violent act, easily satisfies the "substantial cause" standard.

Third, not all intervening acts break the causal chain (*see Hain*, 28 NY3d at 529). An intervening act only breaks the causal nexus if it is extraordinary under the circumstances, unforeseeable in the normal course of events, or independent of and far

removed from the defendant's conduct (*see Derdiarian*, 51 NY2d at 315). That determination depends on whether the intervening act and its consequences were the foreseeable result of a defendant's tortious conduct (*Turturro v City of New York*, 28 NY3d 469, 484 [2016]). Even the "intentional" or "criminal" intervening acts of a third party can be reasonably foreseeable (*see id.*; *Bonsignore v New York*, 683 F2d 635, 638 [2d Cir 1982] [police officer's shooting of his wife did not automatically sever the city's liability because the city could have reasonably foreseen that its negligent practices in arming unfit police officers would result in such a tragedy]; *Kush*, 59 NY2d at 28-29, 33 ["A school that negligently fails to secure dangerous chemicals from unsupervised access by children will not be relieved of liability when an injury occurs and it is reasonably foreseeable that the chemicals might be stolen by children"]).

A plaintiff "need not demonstrate, however, that the precise manner in which the accident happened, or the extent of injuries, was foreseeable" (*Derdiarian*, 51 NY2d at 315; *see Bell v Board of Educ. of the City of N.Y.*, 90 NY3d 944, 947-948 [1997] [court could not "say that the intervening act of rape was unforeseeable as a matter of law" following lapse in teacher's supervision of a student where "fact finder could have reasonably concluded that the very purpose of the school supervision was to shield vulnerable schoolchildren from such acts of violence"]). Indeed, questions of foreseeability are generally not resolved on a motion to dismiss because foreseeability is a "factual issue to be resolved on a case-by-case basis by the fact finder" (*Eiseman v State*, 70 NY2d 175, 187 [1987]; *Voss v Netherlands Ins. Co.*, 22 NY3d 728, 737 [2014] ["questions of proximate cause and foreseeability should generally be resolved by the factfinder"], citing

Derdiarian, 51 NY2d at 315, and *Mirand v City of New York*, 84 NY2d 44, 51 [1994] ["Proximate cause is a question of fact for the jury where varying inferences are possible"]). If a landowner can be liable for injuries caused by a stranger who trespasses and causes injury on their property (*see Scurry v New York City Housing Authority*, 39 NY3d 443, 449-450 [2023]; *Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507, 521-523 [1980]), then so too may a social media company be liable for tortiously designing an addictive product and failing to warn users—especially parents of children using social media (which are most of the children and adolescents in the United States) of the products' inherent dangers.

Plaintiffs address this concern expressly in the pleadings. The complaints cite various public reports—including one mandated by the Governor to protect New Yorkers from future acts of mass violence—which posited a connection between social media and increased violence, including gun violence (*see* AG Report at 2 ["it is hard to ignore the correlation between the rise in mass shootings perpetrated by young men and the prevalence of online platforms where racist ideology and hate speech flourish, in some cases by design"]). The complaints use these reports to support their allegations that the "increase in social media usage and addiction" has been accompanied by an "increase in the spread of white supremacist and white nationalist group imagery, content, and memes," making addicted users like the shooter uniquely susceptible to radicalization.

And while here, the harm arose from exposure to graphic violence and white supremacist propaganda, plaintiffs allege that the algorithm is content-agnostic (*see also supra* n 10). According to plaintiffs, defendants' products and platforms rely on these

complex algorithms to keep users engaged, which negatively impacts young people's mental health, and, in turn, increases the tendency to violent behavior, all the while driving revenue for these defendants.[11]

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[11] Several of the social media companies are defending lawsuits across the country seeking relief for similar claims of addiction-linked injuries (*see e.g. In re Social Media Adolescent Addiction/Personal Injury Products Liab. Litig.*, 702 F Supp 3d 809 [ND Cal 2023] [failure to implement robust age verification processes to determine users' ages, failure to implement effective parental controls, failure to implement effective parental notifications, failure to implement opt-in restrictions to the length and frequency of use sessions, failure to implement default protective limits to the length and frequency of use sessions, creating barrier to account deletion, failure to label edited content, and making filters available to users are all not barred by Section 230]; *Commonwealth v Meta Platforms, Inc.*, 497 Mass 384, 409 [2026] [infinite scroll, autoplay, IVR, and ephemeral content design features "concern how, whether, and for how long information is published, but the published information itself is not the source of the harm alleged"]; *Social Media Cases*, 2023 WL 6847378, at *4 [Cal Super Ct Oct. 13, 2023] [where "(t)he features themselves allegedly operate to addict and harm minor users of the platform regardless of the particular third-party content viewed by the minor user," "Section 230 does not shield Defendants from liability for the way in which their platforms actually operate( )"]; *Meta Platforms, Inc. v Eighth Jud. Dist. Ct.*, 588 P3d 863, 2026 WL 1129147, *4, 2026 LX 263503, *8-9 [Nev 2026] [because the State sought to hold Meta liable for its own conduct in designing an app aimed at cultivating addiction to serve its economic goals of driving ad revenue, the underlying complaints were outside of Section 230 immunity]; *Tennessee v Meta Platforms, Inc.*, No. 23-1364-IV, Slip Op at 24, https://perma.cc/K5D3-WWJE [Tenn Super Ct Oct. 17, 2024] [Section 230 is no bar where "it is the design and the way Instagram functions that makes it addictive and thus harmful to consumer . . . not the content itself"]; *Vermont v Meta Platforms, Inc.*, 2024 LX 189280, at *13 [Vt Super Ct July 28, 2024] [Section 230 does not bar claim "that the intentional *addictiveness* (of the platform design) itself harms Young Users' mental health, separate and apart from the *content* of what they see"]; *Utah v Meta Platforms, Inc.*, No. 230908060, Slip Op at 11, https://perma.cc/69YA-9URD [Utah 3d Dist July 25, 2024] [Section 230 is no bar because "the Division's claims rest on the Defendant's own acts: their use of features and practices to target children into spending excessive amounts of time on their platforms"]; *Arkansas v Meta Platforms, Inc.*, No. 57CV-23-47, Slip Op at 5, https://perma.cc/C7PP-Y6LW [Ark Cir Ct June 13, 2024] [Section 230 is no bar where "the design features of Meta's platforms themselves are (allegedly) hazardous to adolescents because the features are designed to addict and exploit

Thus, the majority's assertion that the shooter's actions were not foreseeable is nothing more than a factual conclusion, but that determination cannot be made by the Court on a motion to dismiss (*see Parvi v City of Kingston*, 41 NY2d 553, 555-556, 559 [1977] [reversing motion to dismiss and emphasizing that it was for the factfinder to determine whether police officers' negligence was proximate cause of decedent's injuries]; *Anwar v Fairfield Greenwich Ltd.*, 728 F Supp 2d 372, 446 [SD NY 2010] [whether criminal Ponzi scheme orchestrated by Bernie Madoff was a supervening cause of plaintiffs' losses meriting dismissal of claims against financial intermediary turned upon "(w)hether or not Madoff's actions were reasonably foreseeable … a question of fact not proper for resolution at the motion to dismiss" stage], citing *Derdiarian*, 51 NY2d at 314; *cf. Cortlandt St. Recovery Corp.*, 31 NY3d at 49 ["(i)t would be unreasonable to require greater detail from [plaintiff] as to each individual's daily conduct and involvement in the fraud at this pre-answer, pre-discovery stage"]). Contrary to the majority's view, we cannot say, as a matter of law, that plaintiffs are unable to muster proof to persuade a jury that

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the frailties of developing brains"]; *New Hampshire v Meta Platforms, Inc. et al.*, No. 217-2023-CV-00594, Slip Op at 25–26, https://perma.cc/D493-JCLY [Merrimack Sup Ct Dec 10, 2024] [Section 230 is no bar where "Meta's product design features, in and of themselves, are (allegedly) harmful to New Hampshire children regardless of the substance of the third-party content displayed"]; *Montana v Meta Platforms, Inc. et al.*, No. BDV-2024-797, Slip Op at 26, https://perma.cc/4VUR-NCT9 [Mont Dist Ct July 7, 2025] [Section 230 is no bar because "the State's claim is based on Meta's actions, namely: 'creating and marketing an app that is intentionally addictive' "]; *District of Columbia v Meta Platforms, Inc. et al.*, No. 2023-CAB-6550, Slip Op. at 20, https://perma.cc/BY7B-WFC5 [DC Super Ct Sept. 9, 2024] [similar]; *Oklahoma v Meta Platforms, Inc.*, No. CJ-2023-180, Slip Op at 6, https://perma.cc/MLE8-Z937 [Okla. Dist. Ct. Nov. 20, 2024] [similar]; *New Mexico v Meta Platforms Inc. et al.*, No. D-101-CV-2023-02838, Slip Op at 2, https://perma.cc/75FR-LM89 [NM 1st Jud Dist Ct June 21, 2024] [similar]).

defendants' products are dangerously defective and they should have warned users and parents of the defect and consequences of using their products exactly as defendants intended. Plaintiffs allege that they can establish a legally sufficient link between social media usage, the algorithms' feed, and an increased tendency toward violent behavior by young people, including racially-biased violence. And several public statements by senior executives and employees of the defendants' firms cited in the complaints support precisely that view.

The complaints detail that as early as 2017, internal content moderation teams at Facebook were sounding the alarm that "Facebook was simply not built to handle problems of (the) magnitude" created by operating a digital town square for, at that time, 1.3 billion global users. Facebook knew of the dangers of its livestreaming feature, among other functionalities. The complaints cite statements from a former Director of Content Policy noted that their team "consulted for [Facebook] Live" and explicitly "anticipate[d] murders and suicides on Live," as well as "far worse," confirming that "all of one of our top 5 predictions have played out." The policy director expressed deep frustration over "not being listened to and then hearing these stories come out," lamenting that it still took "over a year to post-launch (after these horrible incidents happened) to get most of the tools we were begging for from the start" while management insisted "that no one could have anticipated" the violence. The complaint cites comments made by the Founder of Facebook's Global Executive Program acknowledging that the policy team had not only predicted these outcomes but had also "backed them up with examples from multiple Live platforms preceding Facebook," concluding with a candid admission: "I'd rather we were

just honest and could say, if only to ourselves, that we took a calculated risk because of the upside was more important to us."

The proof marshalled by the plaintiffs as to all of the social media defendants, combined with data on the well-documented easy access to guns and commonplace nature of mass shootings, may persuade a jury that the shooter's actions are not "so extraordinary" as the majority assumes.

The sad truth is that mass shootings have become so common that the Federal Bureau of Investigation publishes annual reports tracking these incidents (*see generally* Federal Bureau of Investigation, U.S. Department of Justice & Advanced Law Enforcement Rapid Response Training Center at Texas State University, Active Shooter Incidents in the United States 2024 [June 2025], https://www.fbi.gov/file-repository/reports-and-publications/2024-active-shooter-report/view [last accessed Nov. 11, 2026]). Because of that reality, legislatures treat mass-casualty violence as a known, planned-for risk of operating a business or institution, not as an unforeseeable aberration.

At the time the Tops massacre occurred in 2022, 44 states and the District of Columbia mandated that education institutions have procedures in place for a mass shooting or similar such disaster.[12] State legislators similarly had already recognized the

[12] *See* Alabama (Ala Code § 36-19-10); Arizona (Ariz Rev Stat Ann § 15-341 [A] [31]); Arkansas (Ark Code Ann § 6-15-1303); California (Cal Educ Code § 32282 [J]); Colorado (Colo Rev Stat Ann § 22-32-109.1); Connecticut (Conn Gen Stat § 10-231); Delaware (Del Code Ann title 29, § 8237); Florida (Fla Stat § 1006.07 [6] [2]); Georgia (Ga Code Ann § 20-2-1185); Illinois (105 ILCS 128/15; 105 ILCS 128/20 [c]); Indiana (Ind Code Ann § 20-34-3-20); Iowa (Iowa Code Ann § 280.30); Kentucky (Ky Rev Stat Ann § 158.162); Maryland (Md Code Regs 13A.02.02.04); Massachusetts (Mass Gen Laws ch 69, § 8A); Michigan (Mich Comp Laws Ann § 29.19); Minnesota (Minn Stat Ann § 121A.037);

foreseeability of mass casualty events in specific public and commercial venues. For example, New Jersey requires sports and entertainment facilities to prepare and maintain an emergency operations plan every year in coordination with local fire, law enforcement, and emergency response agencies, explicitly directing law enforcement to use those plans to prepare and train for mass casualty and active shooter incidents at those venues (NJ Stat Ann § 52:27D-224.3). Additionally, well before 2022, several states already mandated that certain health care employers adopt targeted workplace violence prevention plans (*see generally* Occupational Safety and Health Administration, Workplace Violence Prevention and Related Goals [Dec 2015] available at https://www.osha.gov/sites/default/files/OSHA3828.pdf [noting California's 1993 mandate, Washington's 2009 mandate, and similar statutes in Connecticut and Illinois]).

Since 2022, state legislatures have expanded these active threat and violence prevention mandates across broader private and retail sectors. In 2023, California required

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Mississippi (Miss Code Ann § 37-3-81); Missouri (Mo Rev Stat § 170.315); Montana (Mont Code Ann § 20-1-401); Nebraska (Neb Rev Stat § 79-2,144); Nevada (Nev Rev Stat Ann § 388.243); New Hampshire (NH Rev Stat Ann § 189:64); New Jersey (NJ Stat Ann § 18A:41-1); New Mexico (NM Stat Ann § 22-13-14); New York (Education Law § 807; 8 NYCRR 155.17); North Carolina (NC Gen Stat Ann § 115C-105.49); North Dakota (ND Cent Code Ann § 15.1-06-12); Ohio (Ohio Rev Code Ann § 3737.73); Oklahoma (Okla Stat Ann title 70, §§ 5-148, 5-149, 24-100.5); Oregon (Or Rev Stat Ann § 339.408 [former § 336.071]); Pennsylvania (24 Pa Cons Stat Ann § 15-1517); Rhode Island (RI Gen Laws § 16-21-24); South Carolina (SC Code Ann § 59-63-910); South Dakota (SD Codified Laws § 13-25-10); Tennessee (Tenn Code Ann § 49-6-807); Texas (Tex Educ Code § 37.114; 19 Tex Admin Code § 103.1209); Utah (Utah Admin Code R277-400-4); Vermont (Vt Stat Ann title 16, § 1481); Virginia (Va Code Ann § 22.1-137.2); Washington (Wash Rev Code § 28A.320.125); West Virginia (W Va Code § 18-9F-9); Wisconsin (Wis Stat § 118.07); Wyoming (Wyo Stat Ann § 35-9-505); District of Columbia (DC Code § 38-1743.01).

nearly every general industry employer to establish, implement, and maintain a written workplace violence prevention plan, including procedures for alerting employees to workplace violence emergencies (Cal Lab Code § 6401.9). New York mandates that schools, public employers, general hospitals, nursing homes, and retail businesses with ten or more employees implement comprehensive workplace violence prevention programs, maintain emergency operations plans, and train personnel through regular active shooter and lockdown drills (Education Law § 807; Labor Law §§ 27-b, 27-e; Public Health Law § 2832; 8 NYCRR 155.17). These enactments show that legislatures now regard violent attacks on people in workplaces and public venues as a recurring hazard that responsible operators are expected to anticipate and prepare for. Suffice to say, whether the prevalence of mass shootings—in light of what plaintiffs might have unearthed during discovery—would put any reasonable social media company on notice of the potential danger of mass violence due to its alleged defective product and failure to warn of its inherent dangers, is a question for the trier of fact.

In conclusion, plaintiffs have sufficiently pleaded cognizable claims of product liability and failure to warn against the social media defendants that profit from products allegedly designed to addict their users, especially children who are particularly vulnerable to the products' impact on the brain. These particular claims are not grounded on the publication of third-party content, or editorial decisions related to content display, and therefore Section 230 does not render defendants immune to those claims.

I would reverse and reinstate plaintiffs' complaints against these social media defendants.

No. 68:

Order affirmed, with costs, in a memorandum. Judges Garcia, Singas, Cannataro and Halligan concur, Judge Halligan in a concurring opinion. Judge Rivera dissents in part in an opinion, in which Chief Judge Wilson and Judge Troutman concur.

No. 69:

Order affirmed, with costs, in a memorandum. Judges Garcia, Singas, Cannataro and Halligan concur, Judge Halligan in a concurring opinion. Judge Rivera dissents in part in an opinion, in which Chief Judge Wilson and Judge Troutman concur.

No. 70:

Order affirmed, with costs, in a memorandum. Judges Garcia, Singas, Cannataro and Halligan concur, Judge Halligan in a concurring opinion. Judge Rivera dissents in part in an opinion, in which Chief Judge Wilson and Judge Troutman concur.

No. 71:

Order affirmed, with costs, in a memorandum. Judges Garcia, Singas, Cannataro and Halligan concur, Judge Halligan in a concurring opinion. Judge Rivera dissents in part in an opinion, in which Chief Judge Wilson and Judge Troutman concur.

Decided November 23, 2026