Prepared Written Testimony

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From the Courtroom to Congress: Why Landmark Social Media Verdicts Demand Federal Action to Protect Kids Online

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Introduction

Thank you for the invitation to appear before you today to discuss the many reasons why recent trial court victories further demand federal legislation to protect children in online environments from the platforms which two separate juries have found are designed to exploit children's still developing minds.[1] My name is Mary Graw Leary and I am a Professor of Law at the Catholic University of America, Columbus School of Law.[2] My scholarship focuses on the exploitation of marginalized people, especially women and girls; crime victim rights; and the intersection of criminal law and technology.[3] I have researched and studied the many ways people are exploited online and how the current legal framework enables platforms to facilitate the exploitation of people, especially children, in a myriad of ways including through child sex abuse material (CSAM), human trafficking, and Image Based Sexual Abuse (IBSA). My experience includes studying these issues as an academic but also working on issues of online exploitation with victim survivors, non-profit organizations, and other stakeholders.

For decades it has been clear that federal congressional action is needed to respond to the epidemic of online harms to children. The numbers alone make this conclusion inescapable. The National Center for Missing and Exploited Children (NCMEC) reported 29.2 million separate reports of suspected child sexual exploitation in 2024, including 62.9 million images, videos, and other files and 546,000 reports concerning online enticement (a 192% increase).[4] The FBI issued a national public safety alert "regarding an explosion in incidents of children and teens being coerced into sending explicit images online and for additional explicit material or money."[5] The Surgeon General called for a warning label on social media platforms.[6] Although these reports and warnings include different forms of exploitation, they share some commonalities. All these forms of exploitation occur in an online environment in which tech platforms engage in practices without regard to safety - often aware that these actions exploit the developing juvenile brain.

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[1] *K.G. v. Meta Platforms*, Inc., 4:25-cv-02691, (N.D. Cal. 2026); *State ex rel. Torrez v. Meta Platforms, Inc.*, No. D-101-CV-2023-02838 (N.M. 1st Jud. Dist. Ct. 2026).

[2] The views expressed are my own and not those of The Catholic University of America .

[3] *E.g.,* The Failed Experiment of §230 of the Communications Decency Act: How it Facilitates Exploitation and How It Must Be Reformed, 70 *Vill. L. Rev*. 49 (2025); History Repeats Itself: The New Faces Behind Sex Trafficking Are More Familiar Than You Think, 68 *Emory Law Journal Online* 1083 (2020); The Indecency and Injustice of the Communications Decency Act, 41 *Harvard Journal of Law and Public Policy* 553 (2018); The Third Dimension of Victimization, 13 *Ohio State Journal of Criminal Law* 139 (2016); The Digital Nexus of Commercial Exploitation of Children and Adolescents in the United States: From the Streets to Cyberspace, *Sexual Development, The Digital Revolution, and the Law,* Oxford University Press (Co-Authored) (2014).

[4] 2024 CyberTipline Rep., Nat'l Ctr Missing and Exploited Children (2025), *available at* https://www.missingkids.org/gethelpnow/cybertipline/cybertiplinedata.

[5] Press Release, Federal Bureau of Investigation, *FBI and Partners Issue National Public Safety Alert on Sextortion Schemes* (Dec. 19, 2023) .

[6] Vivek Murthy, *Surgeon General: Why I'm Calling for a Warning Label on Social Media Platforms*, New York Times (June 17, 2024), *available at* https://www.nytimes.com/2024/06/17/opinion/social-media-health-warning.html.

The platforms appear to do so in part because congressionally constructed legal protections insulate them from any oversight or accountability for harms they cause. Consequently, they face no deterrence for designing products without regard to safety. Rather, the system incentivizes them to increase engagement through any means necessary, even exploiting children's still developing mind and risking them great harm.

Indeed, Congress itself has been aware of the increasing instances of harm caused by tech platforms and has held over 40 hearings since 2019 on issues touching on technology and child protection with tech executives testifying in several of those hearings.[7] While the harms have been increasing in scope and severity, the actual causes of these harms have come more into focus in recent years. For many years, because of the distortion of §230 of the Communications Decency Act (§230), the public has only been able to speculate that platforms' internal business decisions have been a contributing cause to many of these harms to children. Tech platforms' ability to use §230 to prevent transparency has prevented access to their internal decision making. However, in recent years whistleblowers,[8] internal documents,[9] and now public trials[10] have pulled back the curtain and revealed that such platforms have designed their products with awareness they harm children so that they can maximize profits for their unregulated industry.

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[7] *E.g., Big Tech and the Online Child Sexual Exploitation Crisis*: Hearing Before the S. Comm. on the Judiciary, 118th Cong. (2024); *The World Wild Web: Examining Harms Online*: Hearing Before the Subcomm. on Com., Mfg., & Trade of the H. Comm. on Energy & Com., 119th Cong. (2025); *Protecting Kids Online: Snapchat, TikTok, and YouTube*: Hearing Before the Subcomm. on Consumer Prot., Prod. Safety, & Data Sec. of the S. Comm. on Com., Sci., & Transp., 117th Cong. (2021).

[8] *E.g.,* Shannon Bond & Bobby Allyn, *Whistleblower Tells Congress that Facebook Products Harm Kids and Democracy*, NPR (Oct. 5, 2021, 12:09 PM), https://www.npr.org/2021/10/05/1043207218/whistleblower-to-congress-facebook-products-harm-children-and-weaken-democracy [https://perma.cc/PB3Y-XBZF] (explaining that internal research documents from the companies show that the company is aware of the harm its platforms can cause to children, but fail to adapt proper safety measures); *Written Testimony of Arturo Bejar Before the Subcommittee on Privacy, Technology, and the Law*, U.S. Sen. Comm. on the Judiciary (Nov. 7, 2023), https://www.judiciary. senate.gov/imo/media/doc/2023-11-07-testimony-bejar.pdf [https://perma.cc/VZ6Z-A33S].

[9] *E.g.,* Jeff Horwitz, *The Facebook Files: A Wall Street Journal Investigation*, Wall St. J. , https://www.wsj.com/articles/the-facebook-files-11631713039 [https://perma.cc/K6DV-JH8X] (last visited Mar. 5, 2025) (describing internal documentation of harmful effects of products, which demonstrated Meta's awareness of harm it caused and failure to respond).

[10] *E.g.,* Cecelia Kang, et al, *Meta and YouTube Found Negligent in Landmark Social Media Addiction Case,* The New York Times (March 25, 2026); (noting that lawyers "presented the jury internal company documents from Meta and YouTube that showed tech executives knew of and discussed the negative effects of their products on children"); New Mexico Department of Justice, *New Mexico Department of Justice Wins Landmark Verdict Against Meta* (May 5, 2026)(noting "internal Meta documents and testimony obtained by the NMDOJ in the litigation reveals repeated warnings from Meta employees and outside child safety experts about dangers present on Meta's platforms.")

These recent trials underscore the growing chorus of judges,[11] states,[12] and the public[13] calling for congressional action to address tech's "unconscionable" behavior.[14]

In this testimony, I offer three touchstones to frame this important conversation: the compelling history of legislative mechanisms to protect citizens; the more compelling specific history and obligation of legislative mechanisms to protect children; and the practical need for the federal legislative mechanisms to engage in protection of its citizens. Interwoven among these is the unique role of federal legislation to first *prevent* harm and when prevention fails, allow for access to justice for the harm experienced.

The Critical Role of Legislation to Protect in General

Historically, Congress has long understood one of its many functions is to protect citizens from harm. As Alexander Hamilton noted in 1787, "Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice, without constraint."[15] Similarly, the Supreme Court noted that "'(t)he most basic function of any government is to provide for the security of the individual and of his property.'"[16] While undoubtedly Congress must balance its authority and obligation to protect with other important constraints and obligations, there is no question that federal legislation plays an essential and unique role in protecting citizens from harm prior to the harm occurring.

Traditionally, the protection of people from harm, particularly the harm of an extraordinarily powerful facilitator of exploitation such as an industrial force, has not been left solely to the victims. Rather, a legal regime of deterrence from wrongdoing and incentive for law abiding behavior has been accomplished by both the public and private law functioning together with each contributing to protection for the public and clear guidelines for potential

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[11] *E.g.,* Doe v. Snap, Inc., 88 F.4th 1069, 1070 (5th Cir. 2023) (Elrod, J., dissenting from denial of reh'g en banc) (per curiam)(seven of fifteen judges from the Fifth Circuit Court of Appeals dissented from a denial of rehearing en banc, asking their colleagues to revisit its "sweeping immunity for social media companies that the text cannot possibly bear."); Force v. Facebook, Inc., 934 F.3d 53, 77 (2d Cir. 2019) (Katzmann, C.J., concurring in part and dissenting in part); Doe v. Facebook, Inc., 142 S. Ct. 1087 (2022) (Thomas, J., statement respecting denial of certiorari) (Justice Thomas highlighted the narrow focus on § 230's text and expressed concern about courts granting "sweeping immunity" and the "capacious conception" of what it means to be a publisher that some lower courts espouse.)

[12] *NAAG Supports Amendment to the Communications Decency Act*, Nat'l Ass'n of Att'ys Gen. (May 23, 2019), https://www. naag.org/press-releases/naag-supports-amendment-to-the-communications-decency-act/ [https://perma.cc/B8HZ-S4F3] (noting support for a letter signed by forty-seven attorneys general to amend § 230 to allow the enforcement of state law).

[13] Emily A. Vogels, *56% of Americans Support More Regulation of Major Technology Companies*, Pew Rsch. Ctr. (July 20, 2021).

[14]David Hamilton, *Jury Finds Meta's Platforms Are Harmful to Children in 1st Wave of Social Media Addiction Lawsuits*, PBS News (May 10, 2026) (noting that "[t]he jury agreed with allegations that Meta made false or misleading statements and also agreed that Meta engaged in "unconscionable" trade practices that unfairly took advantage of the vulnerabilities of and inexperience of children.")

[15] The Federalist 15 (1787).

[16] United States v. U.S. Dist. Ct. for E. Dist. of Mich., S. Div., 407 U.S. 297, 312, (1972)(quoting Miranda v. Arizona, 384 U.S. 436, 539, 16 L.Ed.2d 694 (1966) (White, J., dissenting)).

wrongdoers. Within this legal regime, the public law plays an essential role as it can prevent harm by establishing guidelines prior to any wrongdoing. If the public law is followed, then in theory, harm is prevented and the need for private litigation to redress harm is minimized.

This is a historical pattern. As noted by many scholars, when a new industry emerges, there may be a period of time when the public law does not address the enterprise.[17] This can be for many reasons, including the cause of harm is not clear, the appropriate shape the law should take has yet to emerge, the potential benefits of the industry, or the threat to society is not fully understood. But, as the industry grows and its potential to inflict harm on the public becomes more apparent, the public law often responds with a legal framework that incentivizes protection and balances advantages of the industry with the potential for harm to the public. This takes many forms including but not limited to public welfare offenses, regulation, civil remedies, and criminal laws. Similarly, these laws can recognize and deter many of the potential bad actors to include direct offenders, those who facilitate harm, or those who benefit from the harmful activity.[18]

The law typically does not place the entire burden for prevention of victimization on the victim herself. Private rights of action and common law torts compliment public law, but do not replace the governmental role to provide security and protection to the citizenry.

This Protective Function of Congressional Action is Particularly Necessary in the Context of Online Exploitation and Those Entities Who Facilitate It

Congressional action to protect and prevent harm online is particularly needed at this time for three reasons. First, this exploitation disproportionately affects children. Second, congressional inaction is partly responsible for the dire situation that currently exists. Third, evidence has emerged in recent years demonstrating that the ecosystem of exploitation that currently exists incentivizes these platforms to continue to act without regard to safety.

The Particular Duty to Protect Children and the Role of Congressional Inaction in Permitting this Harm

It is beyond dispute that the government has a compelling interest in protecting the "physical and psychological well-being of children."[19] Furthermore, the Supreme Court has recognized that "parents and others…[who] have this primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility."[20]

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[17] *See generally, e.g.,* Matthew P. Bergman, Assaulting the Citadel of Section 230 Immunity: Products Liability, Social Media, and the Youth Mental Health Crisis, 26 Lewis & Clark L.Rev. 1159 (2023); Danielle Keats Citron & Benjamin Wittes, The Internet Will Not Break: Denying Bad Samaritans § 230 Immunity, 86 Fordham L. Rev. 401, 406 (2017).

[18] *E.g.,* 18 U.S.C. 1591 (including among those liable for sex trafficking children one who recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a trafficking victim; or benefits, financially or by receiving anything of value, of their trafficking).

[19] *E.g.,* Free Speech Coal., Inc. v. Paxton, 606 U.S. 461, 496, (2025).

[20] Ginsberg v. State of N.Y., 390 U.S. 629, 639 (1968).

Research indicates that parents are widely supportive of legislation regulating social media platforms and would regard such regulation as helpful.[21] Therefore, with regard to child protection, the government has a compelling interest to legislate.

This need is arguably compounded because congressional inaction is, in part, responsible for the ecosystem of exploitation which threatens children. Although Congress initially did not intend to create a climate in which tech platforms were incentivized to maximize profits and harm children's well-being, that is indeed the current world in which our children live and demands Congress to self-correct.

In 1996, when the Internet was in its infancy, Congress recognized the potential and threat this new technology posed to society. Therefore, it sought to establish a system that protected children *prior to harm being inflicted* upon them. One example of this was to include in the updating of the Telecommunications Act (a public law system) a provision entitled *Protection for Private Blocking and Screening of Offensive Material*.[22] This preventative measure was intended to incentivize platforms to protect children and families from exposure to harmful explicit material or harmful offenders.[23] This is explicit in the section entitled *Protection for "Good Samaritan" Blocking and Screening of Offensive Material* wherein Congress particularly sought to encourage

> (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
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> (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to [such] material.[24]

As this Committee well knows, however, tech platforms embarked on a campaign in courtrooms across the country to expand this narrow limited protection for Good Samaritan action and distort it to *de facto* absolute immunity for all business actions.[25] Consequently, tech has been able to

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[21] Samantha L. Vigil, Drew P. Cingel, Jane Shawcroft & Sarah M. Coyne, *Parental Attitudes and Predictors of Support for Youth-Directed Social Media Legislation in the United States*, 34 J. Child & Fam. Stud. 2233 (2025) ("The high levels of support across provisions suggest policymakers could pursue more comprehensive regulation, rather than continuing the piecemeal approach.")

[22] 47 U.S.C. 230(b)(1),(2).

[23] *E.g.,* 141 Cong. Rec. S8088 (daily ed. June 9, 1997) (statement of Sen. Exon); *see also id.* at S8089 ("The heart and the soul of the Communications Decency Act are its protection for families and children."); S8087–92 (statement of Sen. Exon) (discussing the dangers the internet presents to children including exhibits exemplifying "online predators").

[24] 47 U.S.C. 230(c)2).

[25] For a comprehensive discussion of this history *see, e.g.,* Mary Graw Leary, The Failed Experiment of §230 of the Communications Decency Act: How it Facilitates Exploitation and How It Must Be Reformed, 70 *Vill. L. Rev*. 49

assert immunity – a word noticeably absent from §230 – for such actions as facilitating sex trafficking,[26] designing a dating app without safety features to protect users from known dangerous conduct on its platforms including allowing other users to impersonate victims and direct others to victims' homes for sex; [27] creating algorithms that facilitate and spread terrorism,[28] refusing to follow court orders,[29] advertising and engaging illegal firearms sales,[30] knowingly designing, managing, and promoting an app to be used to groom and sexually abuse minors;[31] and creating a tool for reprogramming a computer system for cars and providing technical assistance and guidance on using the tool to defeat emission controls.[32] Tech has even argued that it is protected from liability for receipt of CSAM – a federal offense.[33]

Through this litigation campaign tech platforms have actually claimed that §230 establishes a regime rendering them free from accountability or duty to consumers.[34] This was the explicit litigation position of TikTok in a hearing for a motion to dismiss CSAM claims. Regarding tort and negligence liability, TikTok had the following exchange with the court:

> THE COURT: So, you don't—you don't have a duty to—
> [COUNSEL FOR TIKTOK]: Not as articulated.
> THE COURT: —to design a platform in a safe way. . . . [T]hat's what you want to argue.
> [COUNSEL FOR TIKTOK]: Well, what I'm arguing—
> THE COURT: Yes or no? Yes or no?
> [COUNSEL FOR TIKTOK]: *Well, yes, I do want to argue that, Your Honor*.[35]

This blatant claim that platforms do not have a duty to design their products with care reflects the position of the industry.

The creation of a climate in which an entire industry believes and acts as if it does not have a duty to make business and design decisions with safety of the public in mind is in part due

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(2025); Mary Graw Leary, The Indecency and Injustice of the Communications Decency Act, 41 *Harvard Journal of Law and Public Policy* 553 (2018).

[26] Doe v. Backpage.com, LLC, 817 F.3d 12, 16-21 (1st Cir. 2016).

[27] Herrick v. Grindr LLC, 765 F. App'x 586 (2d Cir. 2019)

[28] Force v. Facebook, 934 F.3d 53 (2d. Cir. 2019).

[29] Hassell v. Bird, 420 P.3d 776, 789 (Cal. 2018) (Yelp's refusal to comply with a court injunction is protected by Section 230).

[30] Daniel v. Armslist, LLC, 926 N.W.2d 710, 715, 726 (Wis. 2019), cert. denied. 140 S.Ct. 562 (2019) (website was immune under Section 230, despite allegations that website intentionally designed to evade federal firearm laws).

[31] Doe v. Snap, Inc. 2022 WL 2528615 (S.D. TX July 7, 2022), aff'd by 2023 WL 4174061, (5th Cir. June 26, 2023), re'h en banc den'd by 88 F.4th 1069 (5th Cir. Dec. 18, 2023).

[32] United States v. EZ Lynk, et.al, 2024 WL 1349224 (S.D. N.Y. March 28, 2024).

[33] WebGroup Czech Republic, 2024 WL 3533426, at *6 (C.D. Cal. July 24, 2024).

[34] Calise v. Meta Platforms, Inc., 103 F.4th 732, 742 (9th Cir. 2024) ("Meta invites us to reconsider the limitations we have previously recognized and encourages us to adopt a broader rule that would effectively bar 'all claims' 'stemming from their publication of information created by third parties.'" (quoting Doe v. MySpace, Inc., 528 F.3d 413, 418 (5th Cir. 2008)).

[35] Transcript of Hearing on Motion to Dismiss at 146–47, *In re* Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig., No. 22-MD-3047 (N.D. Cal. 2023) (emphasis added).

to the current incentive structure that offers no deterrence for platforms to pursue dangerous business models. This structure is a result of the distortion of §230 and congressional inaction to correct this distortion. Social media platforms' concerted effort to distort §230 has severely limited access to the courthouse by survivors and survivor families in a manner that Justice Thomas described a veritable "get out of jail free card."[36]

Tech has also been just as intentional in preventing Congress from acting to update this 1996 law. Congress has been aware of this distortion for several years. While individual senators and members of the Senate Judiciary Committee have acted in a bipartisan manner to propose legislation, Congress as a whole has failed to act. It has been well documented that tech lobbying blocked bipartisan child protection legislation.[37] According to one study, 8 of the largest tech, AI, and social media companies spent a combined $71 million lobbying Congress – that equates to $330,000 every day Congress was in session last year.[38] That same study reported that Meta alone deployed approximately 89 lobbyists representing roughly one lobbyist for every six members of Congress.[39] This effort demonstrates how valuable to these platforms de facto absolute immunity has become to a business model that seems characterized by choosing profits over safety. Because Congress is partially responsible for this perverse incentive structure and a lack of deterrence for exploitive practices, Congress is especially compelled to act.

Information Revealed Through Recent Litigation Regarding Tech Platforms Underscore the Need for Congressional Action

Congressional action is further demanded by new information that has emerged from recent trials and events. For years, because of tech companies' ability to prevent discovery of internal documents and prevent legislation that would provide the public with some transparency, Congress has had to speculate as to the connection between the design of these platforms and the harms children experience in extraordinary numbers. During that time, tech executives came before Congress and represented to it that these harms were seemingly collateral side effects of the Internet system with which the platforms themselves were struggling. More recently, due to congressional investigations, whistleblowers, and leaked documents a very different picture emerged.[40] As noted by the Tech Oversight Project, tech platforms' claims before Congress have been refuted by evidence presented at trial.[41] These trial documents and the subsequent verdicts

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[36] Doe v. Snap, Inc., 144 S. Ct. 2493, 2494 (2024) (Thomas, J., dissenting denial of certiorari) (mem.).

[37] *E.g.,* Georgia Wells, Kristina Peterson & Natalie Andrews, *Inside Big Tech's Bid to Sink the Online Kid Safety Bill*, Wall St. J. (Nov. 17, 2024), https://www.wsj.com/politics/policy/meta-google-lobbying-child-online-safety-bill-5ee63dcc https://perma.cc/RQ8K-EGTK]; Thomas Barrabi, *Big Tech Mounts 'Divide and Conquer' Bid in Washington to Kill Kids Online Safety Act: Sources*, N.Y Post (Sept. 30, 2024, 6:03 AM), https://nypost.com/2024/09/30/business/big-tech-mounts-divide-and-conquer-bid-in-washington-to-kill-kids-online-safety-actsources/[https://perma.cc/GKT9-6J9R].

[38] Issue One, *Armies of Lobbyists Helped Big Tech Rack up Victories During First Year of Trump's Second Term* (Jan. 21, 2026).

[39] Id.

[40] *See, supra* notes 8-10.

[41] Katie Paul, *Mark Zuckerberg Lied to Congress. We Can't Trust His Testimony*, Tech Transparency Project (Jan. 31, 2024), https://www.techtransparencyproject.org/articles/mark-zuckerberg-lied-to-congress-we-cant-trust-his-

establish what has long been suspected: these platforms knowingly designed their products to maximize profits and ignore safety. The New Mexico case also made clear that tech's false safety claims epitomize an "unconscionable" misrepresentation to the public. Both juries awarded significant damages in addition to finding liability.

Although recent verdicts represent a positive step forward for victim survivors, this does not replace the need for legislative action. These victories came after over a decade of attorneys and state attorneys generals trying to hold platforms accountable for platforms' harmful actions. Each time they ran into dubious obstacles as tech used §230 to claim more and more expansive immunity for their actions.[42] The fact that a growing chorus of judges are noting that tech's claim of sweeping immunity do not appear to be consistent with the text or the history of §230 of does not absolve Congress from utilizing its authority to amend §230 and implement other public laws that will act as a deterrent to dangerous behavior and prevent some harms, especially to children. Such a view would be analogous to a child being poisoned by a dangerous medicine which is routinely distributed, labelled, packaged, or delivered improperly by businesses. If that child is rushed to an emergency room and survives, due to excellent work of emergency room doctors' locating an antidote, one would not conclude that no preventive action is needed. To the contrary, the event would serve as a warning that protections may be needed to be put in place regarding distribution, labelling, packaging or delivering of medications to prevent such danger from occurring again. Similarly, because the heroic and dogged work of some attorneys generals and pro bono attorneys may have achieved a modicum of justice for grieving families – in spite of the distortion of §230 – does not mean §230 and the incentive to exploit children for profit is no longer a problem. Congress must act.

Therefore, because protecting children's physical and psychological well-being is a compelling government interest, Congress should act. This is further required because congressional inaction is in part responsible for creating an ecosystem in which tech companies are not deterred from engaging in dangerous business practices because an outdated and distorted law provides them with an incentive to exploit and increase profit rather than protect. Finally, Congress and the public now have obtained an insight into exactly what tech is designing their products to do and that revelation transforms what was once speculation to confirmation that such an industry should have preventive guardrails that only Congress can provide.

The Status Quo is Impractical

The final compulsion for congressional action is that the status quo is untenable and impractical. Individual trials do not have the same preventative power that federal statutes do. If a business, any business, knows that it is definitively against the law to design its products

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testimony. For an outline of evidence from the social media addition trials see Tech Oversight Project, *Big Tech on Trial*, https://techoversight.org/bigtechontrial/.

[42] *See supra,* notes 25-33; Doe v. Snap, Inc., 144 S. Ct. 2493, 2494 (2024) (Thomas, J., dissenting denial of certiorari) (mem.).

without safety in mind, or design a product without adequate testing before its release, or engage in other exploitive behaviors, it will more likely be deterred by that clear law than by the possibility it might be sued in a regime in which it has cultivated broad de facto absolute immunity. The success of hard fought litigation might bring justice to one or even several plaintiffs, but that is after the victims have been harmed. It is better to enact a reasonable system of protection and prevention, than a reactive system of injury redress.

Furthermore, while private rights of action are a complement to criminal law and do provide some deterrence, they are not designed to replace criminal or public law.[43] Phrased another way, the legal goal should be to have laws in place so that there are not future victims, not to simply provide victims – or in the case of death their families - the right to sue.

To place on the shoulders of these litigants the herculean task of changing tech platforms' current incentive structure is also impractical because of who the potential defendants are in such cases. While $375 million dollar and a $6 million dollar verdicts are significant, the revenue for Alphabet (Google's parent company) exceeded $400 billion and for Meta exceeded $200 billion last year.[44] The financial power of these platforms alone makes it clear that private litigation by itself likely cannot create the kind of deterrence that common sense legislation can provide.

The injustice of such an approach is further exacerbated by the inherent inequities in such a legal regime. Such a system would do little to prevent harm, but when harm occurs it would allow access to courts only for the relatively few with the resources to navigate the distorted §230 landscape, years of litigation, and appeals. Similarly, the recent New Mexico trial was the result of a lengthy undercover proactive investigation. Burdening states which have different capacities for such investigations further raises inequities among them. With over 60 million files reported to NCMEC last year, the few who succeed will likely not make a dent in the millions harmed.

Finally, courts continue to call on Congress to legislate. For years they have asked Congress to update §230 and address the implications of sweeping immunity.[45] More recently, the judge in the New Mexico case has expressed concerns on the limits of his authority to regulate the industry, noting that he is "not a legislator."[46] The defendants in both trials continue

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[43] The trial judge in the New Mexico case expressed concern about his authority to act in a way reserved for the legislature. Danielle Prokop, *Judge warns New Mexico prosecutors he won't 'overreach' as bench trial against Meta begins,* Source NM (May 6, 2026),

[44] https://companiesmarketcap.com/alphabet-google/revenue/; Nicholas Sutrich, *Meta Had a Record Year in 2025, Yet the Company Plans to Spend Even More Money in 2026 Despite Massive Reality Labs Restructuring*, Android Central (Jan. 28, 2026).

[45] *E.g.,* Jane Doe No. 1 v. Backpage.com, LLC, 817 F.3d 12, 29 (1st Cir. 2016)(noting the remedy is through legislation, not through litigation"); M.A. v. Vill. Voice Media Holdings, 809 F. Supp. 2d 1041, 1058 (E.D. Mo. 2011)("Congress has declared such websites to be immune from suits arising from such injuries. It is for Congress to change the policy that gave rise to such immunity."); *c.f.* Doe v. Snap, Inc., 88 F.4th 1069, 1070 (5th Cir. 2023) (Elrod, J., dissenting from denial of reh'g en banc) (per curiam) (calling on the circuit court to revisit precedents).

[46] Diana Novak Jones, *New Mexico Seeks Changes to Meta Platforms in Youth Harm Trial*, Daily Rec. (May 4, 2026)

to assert that §230 precludes the juries' decisions and lengthy appeals will follow. Congress can resolve these issues.

Conclusion

There are many significant aspects of the recent verdicts. One of them is they put in a stark light Congress' failure to heed the requests of a growing chorus of judges, parents, the public, and state attorneys generals to take affirmative legislative steps to prevent that harms that so many families have endured. Two separate juries with distinct cases and a full throttled defense from tech platforms reached clear and resounding conclusions. These juries did what Congress has failed to do: examine the mountain of evidence from Big Tech's own internal documents, whistleblowers, and investigations that clearly demonstrate this industry knowingly made business decisions that harmed children and held them accountable. Congress must take a cue from the public, the states, and now these juries: treat these platforms like any other industry and hold them accountable for harmful business practices. Until Congress has the same moral and intellectual clarity that these survivors and attorney generals do – and now two separate juries – little will change. Without change, including to §230, tech's bad actors will continue to be incentivized to exploit children's vulnerabilities and facilitate harm, having no deterrent to do otherwise.