

The Harmful Network: Social Media Immunity Under § 230 Has Cost Us Too Much

For many young people, isolation during pandemic lockdowns only further exacerbated existing mental health afflictions.¹ The statistics for depression among teenagers changed drastically after 2010, correlating with increasing prevalence of social media;² suicides have increased almost every single year since 1999 and currently account for the second leading cause of death among youth.³ Until now, social media companies have enjoyed strong legal protections under § 230 of Title 47 in the United States Criminal Code, known as The Communications Decency Act.⁴ Congress passed this law in 1996, “in the era of online message boards,” to provide civil immunity for internet companies that merely act as forums for others’ speech.⁵

However, this immunity may disappear: parents and other concerned groups have filed more than one hundred and fifty recent lawsuits alleging that these companies are not mere forums for speech but instead knowingly and actively exploit the mental vulnerabilities of their young users.⁶ Most recently, the Seattle Public School System filed suit against TikTok, Google, Meta, YouTube, and Snapchat claiming that these companies achieved success by using algorithms that “exploit the psychology and neurophysiology of their users... These techniques are both particularly effective and harmful to the youth audience Defendants have intentionally cultivated, creating a mental health crisis among America’s youth.”⁷

Reiterating his 2022 State of the Union speech, President Biden published an opinion piece in the Wall Street Journal on January 11, 2023, calling upon Congress to pass bipartisan legislation to “hold Big Tech accountable” for the “experiment they are running on our children for profit.”⁸ Yet Congress might not get the chance; the Supreme Court will soon hear oral arguments for multiple cases concerning interpretations of § 230 and the extent of immunity that the statute may provide to social media companies.⁹ One of these cases, *Gonzalez v. Google*, No. 21-1333 U.S. (2022) has received thirty amici curiae briefs, including many from conservative

¹ See Paul Plener, *Covid-19 and Nonsuicidal Self-Injury: The Pandemic’s Influence on an Adolescent Epidemic*, 111 AM. J. PUB. HEALTH, 195–196.

² Ian McKay, *Up in Smoke: Why Regulating Social Media Like Big Tobacco Won’t Work (Yet!)*, 97 NOTRE DAME L. REV 1669, 1675–76 (2022).

³ Lenny Bernstein, *Suicides Increased in 2021, especially among younger people*, THE WASHINGTON POST, Sept. 29, 2022, <https://www.washingtonpost.com/health/2022/09/29/suicide-increase-2021/>; Brief for Petitioner at 16–17, *Seattle School District #1 v. Meta Platforms, Inc., et al.*, No. 2:23-cv-00032 (W.D.W.A. Jan 6, 2023) (“From 2007 to 2019, suicide rates among youth ages 10–24 in the United States increased by 57 percent.”).

⁴ See Communications Decency Act, 47 U.S.C. § 230 (amended 2018); Gregory M. Dickinson, *Toward Textual Internet Immunity*, 33 STAN. L. & POL’Y REV. ONLINE 1–10 (2021).

⁵ Adam Liptak and David McCabe, *Supreme Court Takes Up Challenge to Social Media Platform’s Shield*, THE NEW YORK TIMES, Oct. 3, 2022 <https://www.nytimes.com/2022/10/03/us/supreme-court-social-media-section-230.html?searchResultPosition=1>; see § 230.

⁶ Sharyn Alfonsi, *More than 1,200 families suing social media companies over kids’ mental health*, CBS NEWS, Dec. 11, 2022 <https://www.cbsnews.com/news/social-media-lawsuit-meta-tiktok-facebook-instagram-60-minutes-2022-12-11/>.

⁷ Brief for Petitioner, *supra* note 3, at 1; Mary Yang, *3 Reasons Why Seattle Schools are suing Big Tech over a youth mental health crisis*, NPR, Jan. 11, 2023, <https://www.npr.org/2023/01/08/1147735477/seattles-schools-are-suing-tech-giants-for-harming-young-peoples-mental-health>.

⁸ Joe Biden, *Republicans and Democrats, Unite Against Big Tech Abuses*, WALL STREET JOURNAL, Jan. 11, 2023, <https://www.wsj.com/articles/unite-against-big-tech-abuses-social-media-privacy-competition-antitrust-children-algorithm-11673439411?page=1>.

⁹ See Amy Howe, *Court agrees to hear nine new cases, including challenge to tech companies’ immunity under Section 230*, SCOTUSBLOG, Oct. 3, 2022, <https://www.scotusblog.com/2022/10/court-agrees-to-hear-nine-new-cases-including-challenge-to-tech-companies-immunity-under-section-230/>.

organizations.¹⁰ It remains to be seen whether the Supreme Court will interpret § 230 immunity to exclude social media algorithms, but we can hope to see changes to the status quo as awareness rises on a national scale through bipartisan efforts.

Patience M. Tyne is from Caldwell, New Jersey and is a second-year student at Vanderbilt University Law School.

¹⁰ *Gonzalez v. Google*, No. 21-1333 U.S. (2022); SCOTUSBLOG, *Gonzalez v. Google LLC*, <https://www.scotusblog.com/case-files/cases/gonzalez-v-google-llc/>.