



ADVOCACY PROGRAMS

**VAN VLECK CONSTITUTIONAL LAW
MOOT COURT COMPETITION**

2025–2026

PROBLEM

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STATE OF NEW COLUMBIA

COMMONSENSE ARTIFICIAL INTELLIGENCE REVIEW ACT

Section 1 – Findings

The State of New Columbia finds that:

- (a) Social media continues to grow in prevalence and popularity.
- (b) Social media platforms can and do serve as platforms for the dissemination of misleading and potentially dangerous information.
- (c) The utilization and growing popularity of Artificial Intelligence accelerates the dissemination of misleading and dangerous information, including by autonomously targeting vulnerable populations with such information.
- (d) Internet content providers, including social media platforms, have a responsibility to protect the safety of their users, and platforms with high numbers of users are at a higher risk of influencing and misinforming individuals.
- (e) Public safety will be protected if internet content providers provide human review of potentially inaccurate, unsafe, or unlawful information.

Section 2 – Definition

For purposes of this law:

- (a) An “Internet Content Provider” means any internet website or application that (1) enables users and/or advertisers to communicate with others through posting information, comments, messages, or images; (2) does business in the state of New Columbia; and (3) has at least 10 million monthly individual users globally.
- (b) “Flagged Information” means any information or content visible to users of an Internet Content Provider that has been reported to an Internet Content Provider as inaccurate, unsafe, or unlawful by at least 50 unique users within a one month period.

Section 3 – Requirements For Internet Content Providers Regarding Flagged Information

All Internet Content Providers must:

(a) provide independent review by at least one natural human being of all Flagged Information, and following that review, have a natural human being make the final decision as to whether the Flagged Information should be allowed or removed from the Internet Content Provider’s website or application, with such decision not relying on algorithmic or machine-generated determinations except as background information used to inform the natural human being’s independent judgment; and

(b) if requested by a user who has reported the Flagged Information, provide a reasoned, responsive, and good faith explanation by a natural human being of the grounds for the decision that the Flagged Information should be allowed or removed.

Section 4 – Enforcement

(a) This law shall be exclusively enforced by the Attorney General of New Columbia, who shall have the authority to bring a civil action in the Superior Court for New Columbia against any Internet Content Provider that has violated any provision of Section 3.

(b) Upon proof to a jury that an Internet Content Provider has violated Section 3 with respect to any Flagged Information, the Attorney General shall be entitled to recover from the Internet Content Provider, on behalf of New Columbia, a civil penalty in the amount of \$10,000 per violation.

(c) Upon a finding that an Internet Content Provider has violated Section 3, the Attorney General is further entitled to seek injunctive relief against the Internet Content Provider prohibiting future violations of that section.

Section 5 – Savings Clause

Nothing in this law shall be construed as suggesting, dictating, requiring or mandating the content or viewpoint of any information, including Flagged Information, that any Internet Content Provider must allow or remove.

Section 6 – Nonseverability

The provisions of this act are not severable. If the application of any provision of this act to any person or circumstance is found to be invalid, unlawful, void, or unenforceable by a court of competent jurisdiction, then the entire act shall be deemed null and void and without further force or effect.

**SUPERIOR COURT OF THE
STATE OF NEW COLUMBIA**

Cindy Lieberman, in her capacity as Attorney
General of the State of New Columbia,

Plaintiff,

v.

SocialAI, Inc.,

Defendant.

Case No. 24-cv-0001

COMPLAINT

Plaintiff, Cindy Lieberman, by and through undersigned counsel, hereby files this Complaint against Defendant SocialAI, Inc. and alleges as follows:

INTRODUCTION

1. In the past decade, the Internet and social media have rapidly evolved into complex, global networks that have fundamentally reshaped communication, culture, and commerce. Social media websites are used by individuals and organizations for purposes including, but not limited to, disseminating information, building community, and marketing products and ideas around the world in real time.

2. The advancement of social media platforms has outpaced regulatory oversight, creating a landscape that effectively functions as a digital Wild West. Social media sites operate with vast autonomy, algorithms govern platforms without any transparency, and social media companies thrive off the lack of regulatory oversight.

3. Among the various ways social media companies have taken advantage of the lack of regulation is the increasing utilization of, and reliance on, Artificial Intelligence (“AI”). Such companies are increasingly leveraging AI to implement more efficient algorithms to personalize

content, optimize user engagement, and moderate vast amounts of information in real time without human control.

4. The development and application of AI and machine-learning technology has outpaced regulation. While the rapid innovation has resulted in beneficial technological feats, the lack of regulatory oversight poses serious dangers for the public.

5. Ultimately, the disparity between technological advancement and government regulation has left social media and Internet users subject to potentially harmful algorithms, misinformation, and manipulation stemming from the lack of accountability systems.

6. The New Columbia Legislature has taken action to address this disparity. In January 2024, it enacted the Commonsense Artificial Intelligence Review (“CAIR”) Act.

7. The CAIR Act protects social media users from unsafe, harmful, and inaccurate information by ensuring that ICPs provide review by a human being of certain content shared and distributed on the site.

PARTIES

8. Plaintiff Cindy Lieberman is the Attorney General of New Columbia and the state’s chief law enforcement officer and representative in all suits or prosecutions brought or opposed by New Columbia. In her official capacity, Plaintiff is responsible for investigating and enforcing violations of the CAIR Act.

9. Defendant SocialAI is a corporation organized under the laws of New Columbia with its principal place of business in New Columbia.

JURISDICTION AND VENUE

10. This Court has jurisdiction and venue pursuant to Section 4(a) of the CAIR Act.

BACKGROUND

SocialAI

11. The facts in this complaint were learned by Plaintiff through an investigation into SocialAI's operations and practices. SocialAI is a social media website with 100,000,000 users worldwide. The company has a total of 100 employees who developed its website and mobile app and oversee day-to-day operations.

12. The SocialAI platform allows individual users to follow other individual users as well as public and private community groups. The platform allows users to share photographs, videos, and commentary on their personal pages and/or within community groups. SocialAI earns its revenue primarily from advertisements placed on users' feeds.

13. SocialAI is an internet content provider boasting a "fully AI-driven platform" controlled by a computerized artificial intelligence system called the Behavioral Recognition Artificial Intelligence Network ("BRaiN"). SocialAI's operations reflect the philosophy of its founder and majority owner, Adelaide Dasher, that a robust and unregulated "marketplace of ideas" is essential for advancing human civilization, and that the potential for harmful speech is, on balance, outweighed by the benefits of unfettered debate.

14. The company developed the BRaiN for the purpose of autonomously making all decisions regarding content on the site, including what to promote and advertise and to whom, and what to remove, based on initial training by human programmers in accordance with SocialAI's basic editorial philosophy.

15. To program the BRaiN, SocialAI developers provided the AI model with large datasets containing examples of inaccurate, unsafe, and illegal content identified by its programmers under the general direction of Ms. Dasher, which then allows the model to learn patterns and make predictions on its own regarding other content.

16. After its training, the BRaiN has served as SocialAI’s sole mechanism for content management and oversight. Because the BRaiN makes its decisions autonomously, even its human programmers cannot discern the precise reasons for the system’s determinations to allow or remove specific information. SocialAI does not have any published or internal policy regarding the type of content that should be removed as inaccurate, unsafe, or illegal.

17. SocialAI relies on the BRaiN’s behavioral recognition technology to maximize user engagement with posts in order to drive advertising revenue, including by predicting emotional reactions of users based on prior interactions or other information.

18. By delegating to the BRaiN all decisions about what content will be displayed to users, SocialAI attempts to serve a potentially limitless user base with minimal levels of human staffing. The data collected by the BRaiN is used to curate the overall type of content seen by users as well as to determine when users are fed specific postings (*e.g.*, updates from friends, community group suggestions, and advertisements).

Factual Background

19. Social AI engages in quarterly audits of the site’s systems, and is able to, and sometimes does, alter the coding and performance of the BRaiN as a result of such audits. During one of these audits in 2024, SocialAI employees learned that the BRaiN determined that users in medical support groups on the site are likely to engage with advertisements boasting solutions to their conditions, and that the BRaiN prioritized and promoted the visibility of advertisement and user posts advocating for possibly unproven medical treatments and cures to members of such groups.

20. Despite learning these facts through the audit, SocialAI’s executive leadership, in a deliberate business decision, chose to maintain the BRaiN’s autonomous promotion strategy without implementing human review for flagged information, explicitly citing the substantial

advertising revenue generated by such content. This decision constituted an affirmative act by SocialAI to continue the dissemination of potentially harmful information.

21. For example, after the audit an advertisement was pushed to members of a diabetes support group community page claiming that “scientific studies have proven” that diabetes is caused by parasites and can be cured with treatments targeting these parasites, specifically electric “zappers.” Both the advertisement and supporting user posts explain that the therapy, which can be purchased and then self-administered, will “zap” the lining of the small intestine with electric pulses, which allegedly cures individuals of their diabetes entirely. Although the advertisement and posts say otherwise, these claims are not supported by peer-reviewed scientific evidence and can be dangerous and possibly fatal, including by causing those with diabetes to forgo other necessary treatments.

22. In the month of August 2024, more than 50 unique users used SocialAI’s reporting function to flag the advertisement featuring the zapper and boasting its success. These users flagged the advertisement as being inaccurate and/or unsafe to members of the diabetes support group, and at least one such user requested that SocialAI provide a reasoned, good faith, and responsive explanation of its decision not to remove the content. There was also debate among users regarding the efficacy and safety of the advertised cures.

23. The BRaiN synthesized the reports and responded to each complaint with the identical, machine-generated response: “Thank you for your concerns. The content in question has been evaluated pursuant to company policies and has been determined to be appropriate.” Pursuant to its coding, however, the BRaiN also added a statement to subsequent posts of this material stating: “Some users have identified this content as inappropriate.”

24. Employees of SocialAI became aware that these advertisements were being pushed to diabetics but did not take any actions because “the AI was working as expected and informed users

that others had flagged the content as inappropriate” and because “the advertisements were generating revenue for the company.”

25. Members of the diabetes support group community page have publicly spoken out regarding the harm they and others suffered, and will suffer, as a result of the zapper treatment. They have also filed complaints with the New Columbia Attorney General’s hotline for consumer protection and urged the state to take action.

26. At least one resident of New Columbia, Michelle Nickel, was hospitalized when she used the zapper instead of her prescribed diabetes medication. Ms. Nickel is a law student who has Type 1 diabetes but is otherwise healthy. Growing frustrated with how her diabetes was affecting her studies, especially after her insulin monitor went off during a civil procedure cold-call, she saw the advertisement for the zapper therapy on SocialAI and purchased and self-administered it in an attempt to cure the life-long disease. As a direct result of the zapper treatment, however, Ms. Nickel was hospitalized for 4 months, with periods in the ICU, and had to temporarily withdraw from school.

27. Although the BRaiN has continuously pushed out this zapper content to the diabetes support group community pages, the AI system has also identified and deleted thousands of other advertisements and posts it determined were inaccurate, unsafe, or illegal, including some that involved unproven cancer treatments.

28. SocialAI has calculated that in order to comply with the CAIR Act’s human review and explanation provisions, it would have to hire thousands of new employees, thereby altering its overall business model and compromising the AI system at the heart of the model. Ms. Dasher, the company’s founder and majority owner, has further stated that the law is contrary to the “editorial policy of the company” and would also diminish advertising revenue.

29. Cindy Lieberman, as Attorney General for the State of New Columbia, brings this action under the New Columbia CAIR Act to protect New Columbia citizens from being harmed by false and unsafe medical information fed to them by robots.

CLAIM FOR RELIEF

VIOLATION OF THE NEW COLUMBIA CAIR ACT

Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

1. SocialAI is an Internet Content Provider within the meaning of Section 2(a) of the CAIR Act, as it provides an online social media platform that hosts more than ten million users per month globally and does business in New Columbia.
2. SocialAI has violated its duties as an Internet Content Provider under the CAIR Act to protect the safety of its online users by taking required steps to help ensure that inaccurate, unsafe, or illegal information is not distributed through its website by having a human being review such information when users have flagged it as such and, if requested, provide a reasoned decision as to whether flagged information will be allowed or removed.
3. SocialAI has violated Sections 3(a) and 3(b) of the CAIR Act because more than 50 users within one month flagged the advertisement for the “zapper therapy” as objectionable and at least one such user requested an explanation for SocialAI’s decision not to allow the content, but SocialAI has failed to provide the required review by a natural human being of that flagged information and has failed to provide the required reasoned, good faith, and responsive explanation by a natural human being for the decision not to remove such content.

4. By affirmatively and deliberately pushing this harmful content to vulnerable users with knowledge of its potential harm without providing any human review or reasoned explanation for not removing the content, SocialAI has independently aided in the circulation of the dangerous information, which has resulted in physical harm to users.
5. Under Section 4 of the CAIR Act, these violations subject SocialAI to a civil penalty of \$10,000 and authorize injunctive relief to prohibit further violations.

PRAYER FOR RELIEF

Plaintiff, Cindy Lieberman, as Attorney General of the State of New Columbia, prays that this Court enters judgment against Defendant SocialAI, for a civil penalty of \$10,000 and enjoin SocialAI from further violations of the human review and reasoned explanation provisions of Sections 3(a) and 3(b) of the CAIR Act.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury of all claims in this Complaint so triable.

Dated: September 1, 2024

Respectfully submitted,

/s/ Cindy Lieberman

Cindy Lieberman

Attorney General for the State of New Columbia

**SUPERIOR COURT OF THE
STATE OF NEW COLUMBIA**

Cindy Lieberman, in her capacity as Attorney
General of the State of New Columbia,

Plaintiff,

v.

SocialAI, Inc.,

Defendant.

Case No. 24-cv-0001

MEMORANDUM OPINION AND ORDER

Danielle Gold, *Judge.*

This case is before the court on the motion of Defendant SocialAI, Inc. (“SocialAI”) to dismiss the complaint filed against it by Plaintiff, Cindy Lieberman, in her capacity as Attorney General for New Columbia, for violations of the Commonsense Artificial Intelligence Review Act (“CAIR Act”). For the reasons stated herein, Defendant’s motion is GRANTED and Plaintiff’s complaint is DISMISSED with prejudice.

Background

On a motion to dismiss, all facts alleged in the complaint are taken as true. N. Col. R. Civ. Pro. 12(b)(6). Plaintiff is the Attorney General for the State of New Columbia and brings this action for civil penalties and an injunction pursuant to her enforcement powers under Section 4(a) of the CAIR Act.

Defendant, SocialAI, Inc. (“SocialAI”) is an Internet Content Provider (“ICP”) within the meaning of the Section 2(a) of the CAIR Act. It boasts a “fully AI-driven platform.” Complaint ¶ 13. To carry out this business model, SocialAI developed the Behavioral Recognition Artificial Intelligence Network (“BRaiN”) which is a computerized artificial intelligence system that

autonomously makes all decisions for the platform regarding the content displayed on the site, including what to promote and advertise and to whom, and what to remove. Complaint ¶¶ 13–14. SocialAI relies on the BRaiN’s behavioral recognition technology to maximize user engagement with posts in order to drive advertising revenue, including by predicting emotional reactions of users based on prior interactions or other information. Complaint ¶ 17. SocialAI’s and the BRaiN’s operations reflect the philosophy of its founder and majority owner, Adelaide Dasher, that that a robust and unregulated “marketplace of ideas” is essential for advancing human civilization, and that the potential for harmful speech is, on balance, outweighed by the benefits of unfettered debate. Complaint ¶¶ 13, 15.

Before launching the BRaiN, the computer model was fed large datasets to train it to identify and remove inaccurate, unsafe, and illegal content. Complaint ¶ 15. Having been so trained, the BRaiN now makes all the decisions regarding the curating of users’ feeds and the posts that they see. Complaint ¶ 16. SocialAI conducts a regular quarterly audit of the BRaiN’s performance. Complaint ¶ 19. On occasion, these audits lead to changes and adjustments to the BRaiN’s coding and performance. *Id.*

The facts leading up to this case began in August 2024, when the BRaiN promoted to members of diabetes support groups an advertisement for a supposedly scientifically tested cure for diabetes that involved “zapping” the intestinal lining to kill parasites that purportedly caused the disease. Within one month, more than 50 unique SocialAI users reported the advertisement to SocialAI as being inaccurate or unsafe, and at least one such user requested that SocialAI provide a reasoned, good faith, and responsive explanation of its decision not to remove the content. Complaint ¶ 22. Prior to this, during a quarterly audit, SocialAI had learned that the BRaiN had determined that users belonging to medical support groups were likely to engage with advertisements boasting cures to their conditions. Complaint ¶ 19. SocialAI, however, made a

deliberate decision not to adjust the BRaiN’s promotion strategy and not to implement human review of flagged content. Complaint ¶ 20. Then, despite the reports, the BRaiN did not remove the “zapper” advertisement but appended a statement to the advertisement stating that the content had been identified as inappropriate. Complaint ¶ 23. At least one user, Michelle Nickel, was hospitalized after attempting to use the advertised diabetes treatment rather than traditional treatments. Complaint ¶ 26.

Following this incident, Plaintiff, in her capacity as Attorney General for New Columbia, filed this case against SocialAI seeking the statutorily prescribed civil penalty under Section 4 of the CAIR Act, as well as an injunction. Plaintiff alleges that SocialAI, which is an Internet Content Provider covered by the law, (1) received reports from at least 50 unique users during the month of August 2024 that the zapper advertisement was inaccurate, unsafe, and/or unlawful and at least one request to provide a reasoned explanation for its decision not to remove the content, and (2) failed to comply with its obligations under Section 3 of the CAIR Act to provide human review of that flagged content and a reasoned, responsive and good faith explanation by a human being of the grounds for its non-removal decision.

Analysis

Defendant has moved to dismiss Plaintiff’s complaint on two alternative grounds:

1. The CAIR Act, as applied to SocialAI, is preempted by Section 230 of the federal Communications Decency Act (“CDA”), 47 U.S.C. § 230 (“Section 230”); and
2. The actions of SocialAI are protected free speech, and New Columbia has violated the First Amendment by forcing it to change its editorial decision-making processes based on content that the State views as objectionable and by compelling it to speak.

In determining whether a complaint should be dismissed for failure to state a claim under New Columbia law, the courts of this State follow federal law interpreting the identical

requirements of Federal Rule of Civil Procedure 12(b)(6). A motion to dismiss tests the legal sufficiency of a complaint. To survive the motion, the complaint must contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in favor of the plaintiff. However, legal conclusions couched as factual allegations are not entitled to the presumption of truth. *Iqbal*, 556 U.S. at 678.

A. The CAIR Act is Preempted by 47 U.S.C. § 230.

In 1996, the U.S. Congress passed the Communications Decency Act, including Section 230, in the face of rapidly expanding and developing uses for the Internet, which was relatively new at the time. Section 230 promotes the goal of continued development of the Internet by encouraging the use of filters and ensuring that internet content providers are not held liable for content created by others. 47 U.S.C. § 230.

The State of New Columbia passed the CAIR Act to address what it saw as the acceleration of “the dissemination of misleading and dangerous information.” CAIR Act § 1(c). The Act seeks to impose a duty on defined ICPs to protect their users by requiring them to provide human review of posts containing “Flagged Information” as defined by the Act, and to provide, if requested, a good faith, reasoned, and responsive explanation by a human being of any decision to remove or retain Flagged Information. CAIR Act §§ 2-3. A finding that a company has violated the CAIR Act results in a civil penalty of \$10,000 per violation and authorizes injunctive relief. CAIR Act § 4(b)–(c).

Defendant does not contest that it is an ICP or that the zipper advertisement constitutes Flagged Information within the meaning of the CAIR Act. Nor does Defendant contest that it has not complied with Section 3 of the Act as to that information. Instead, Defendant contends that the

CAIR Act, as applied to it, is in direct conflict with, and therefore preempted by, Section 230, which provides broad immunity to “interactive computer service” (“ICS”) providers for liability arising from content provided by third parties. Specifically, Section 230(c)(1) states 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,” and Section 230(e)(3) states that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with” Section 230. Plaintiff does not dispute that SocialAI is an ICS within the meaning of Section 230 or that the zipper advertisement was provided by another information content provider.

There is no precedent in the New Columbia courts interpreting Section 230, and the federal courts, whose law is considered instructive in this State, have endorsed conflicting interpretations of Section 230. Under the first, and most common, interpretation, Section 230 provides almost a blanket immunity for an ICS for content created by others so long as (1) the ICS does not participate in the creation of the content; (2) the action for which the liability is sought is the responsibility of a publisher; and (3) the content does not firmly fit within one of the existing Section 230 exceptions (none of which are raised in this case). *See, e.g., Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009).

Defendant principally relies on *Barnes* for its contention that the CAIR Act is preempted by Section 230. In *Barnes*, the plaintiff sought to hold the defendant responsible for its failure to remove content harmful to the plaintiff. *Barnes*, 570 F.3d at 1098–99. The Ninth Circuit concluded that “removing content is something publishers do, and to impose liability on the basis of such conduct necessarily involves treating the liable party as a publisher of the content it failed to remove.” *Id.* at 1103. The facts before us in this case are comparable.

On the other hand, Plaintiff urges us to take a newer approach to Section 230 immunity recently adopted by the Third Circuit. *See Anderson v. TikTok, Inc.*, 116 F.4th 180 (3d Cir. 2024). In *Anderson*, parents sought to hold TikTok liable for the death of their child after TikTok’s algorithm deliberately pushed to the child a dangerous internet “challenge” involving asphyxiation that the child then attempted to perform. *Id.* at 181–82. The Third Circuit held that under the Supreme Court’s ruling in *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), the decisions made by an ICS’s algorithm qualify as first-party speech and are, therefore, not immunized by Section 230. *Anderson*, 116 F.4th at 183–84. Once again, the facts before us in the present case are comparable.

Ultimately, however, this court is convinced by the majority of the federal circuits that Section 230 provides immunity to ICP’s from liability for any actions involving the responsibility of a publisher, including the decision to promote or remove content. The Court finds that the CAIR Act’s requirements for human review and reasoned explanation of “Flagged Information” treat SocialAI as a “publisher or speaker” of third-party content, thereby falling squarely within the preemptive scope of Section 230(c)(1) and (e)(3).

B. The CAIR Act Contravenes the First Amendment.

Defendant also argues that the CAIR Act, as applied to it, contravenes the First Amendment. Although it is unnecessary for the Court to reach that issue in light of the holding above, the Court will address the constitutional challenge given the issue’s importance. The Court holds that even if the Act were not preempted by Section 230, it would violate the First Amendment because it impermissibly intrudes upon SocialAI’s protected editorial discretion. In *Moody*, 603 U.S. at 736–43, the U.S. Supreme Court held that a social media company like SocialAI has a First Amendment right to exercise editorial discretion regarding what content it does

or does not provide to users, even when such discretion may be exercised, as it was here, through a computerized algorithm.

Plaintiff argues that even if that proposition may be true in some cases, it is not true here, where SocialAI's system operates autonomously without human involvement. The Court declines to parse the issue so finely. Any content moderation decision necessarily involves editorial discretion and SocialAI has the right to decide for itself how it will exercise that protected speech right, free from government interference. The fact that SocialAI implements its views about what content is appropriate through an algorithm does not remove them from the category of protected speech. Having so held, the Court declines to reach Defendant's additional arguments regarding compelled speech.

Conclusion

For the foregoing reasons, the complaint is hereby DISMISSED with prejudice and without leave to amend. This case is closed without further proceedings.

Dated: November 29, 2024

/s/ Danielle Gold
Judge, Superior Court of New Columbia

**SUPREME COURT OF THE
STATE OF NEW COLUMBIA**

Cindy Lieberman, in her capacity as Attorney
General of the State of New Columbia,

Appellant,

v.

SocialAI, Inc.,

Appellee.

Case No. 25-cv-0001

May 1, 2025

Before Teal Spellman, *Chief Justice*; and Alec Zandra, Christopher Calvin, Erin Bumpstein, and Katerina Grace, *Associate Justices*.

Chief Justice Spellman delivered the opinion of the Court:

This case presents novel questions regarding the interplay between foundational federal law and state efforts to regulate the use of artificial intelligence (“AI”) by internet content providers. There are two issues before us. The first is whether the Section 230 of the federal Communications Decency Act, 47 U.S.C. § 230 (“Section 230”), preempts New Columbia’s Commonsense Artificial Intelligence Review Act (“CAIR Act” or “Act”) as it is being applied to defendant/appellee SocialAI, Inc. (“SocialAI”) in this case. The second issue is whether the CAIR Act, as applied to SocialAI, contravenes the First Amendment to the United States Constitution. Because the plaintiff’s claim under the CAIR Act is both preempted by Section 230 and violates the First Amendment, this Court affirms the Superior Court’s judgment of dismissal.

Background

As this case comes before us on a motion to dismiss, we accept all facts pleaded in the complaint as true, drawing all plausible inferences in favor of the plaintiff. *See* Superior Court Decision at 4. The CAIR Act was enacted based on the New Columbia’s legislature’s finding that

growth and development of internet content providers and their increasing use of AI has outpaced the regulation of these platforms, leaving users vulnerable to unknowingly consuming misleading and potentially harmful information. *See* CAIR Act § 1. While the advancement of AI has provided many benefits to our society, it has also left users of social media applications susceptible to misinformation and targeted advertisements that can cause them harm. *See* Complaint ¶¶ 1–7. The CAIR Act seeks to fill a regulatory gap by requiring that, for certain categories of information, actual human beings, rather than computer systems, make final decisions as to whether that content will be retained or removed.

SocialAI is a hub for connection and expression, where users can follow others, join community groups, and share personal content ranging from photos to commentary. *See* Complaint ¶ 12. Social AI is controlled in all relevant respects by an autonomous computer system called the Behavioral Recognition Artificial Intelligence Network (“BRaiN”). The BRaiN is an AI model built by SocialAI that governs its social media platform and is responsible for virtually all aspects of the user experience.

Although SocialAI employees initially programmed and trained the BRaiN, it now autonomously makes all decisions regarding content on SocialAI’s site, including what to promote and advertise and to whom, and what to remove. Complaint ¶¶ 13–16. Through an internal audit, SocialAI employees learned that the BRaiN was prioritizing and promoting the visibility of advertisement and user posts marketing possibly unproven medical treatments to medical support groups on the site because these users were likely to engage with that content. Complaint ¶ 19. Thereafter, the BRaiN began displaying to members of diabetes support groups an allegedly unproven advertisement for an electric “zapper” treatment that could be self-administered to cure their condition. Complaint ¶ 21. In August 2024, more than 50 individual SocialAI users reported the zapper advertisement as being inaccurate or unsafe, and at least one user requested that

SocialAI provide a reasoned, good faith, and responsive explanation of its decision not to remove the content. Complaint ¶ 22. Michelle Nickel, a law student in New Columbia, suffered serious injury after substituting her prescribed diabetes medication for the zapper treatment advertised to her by SocialAI. Complaint ¶ 26.

The CAIR Act applies to “Internet Content Providers” (“ICPs”) as defined by the Act and is triggered when specific content (called “Flagged Information”) is reported to the ICP as inaccurate, unsafe, or unlawful by at least 50 unique users within a one-month period. Section 3(a) of the CAIR Act requires ICPs to review Flagged Information and make a final decision on whether it will be retained or removed. In addition, Section 3(b) requires ICPs, if requested by a user, to provide a reasoned, responsive, and good faith explanation by a human being of the grounds for the decision regarding the Flagged Information.

In response to the controversy about the zapper advertisement, Cindy Lieberman, in her capacity as Attorney General of New Columbia, filed a complaint against SocialAI in the Superior Court seeking civil penalties for SocialAI’s violation of Section 3 the CAIR Act and an injunction. SocialAI moved to dismiss the complaint, alleging that the CAIR Act, as applied to it, violates the company’s rights under Section 230 and the First Amendment. The Superior Court granted SocialAI’s motion to dismiss on the ground that Section 230 preempts the CAIR Act as applied to SocialAI, and also violates the First Amendment.

The Attorney General appealed that decision to this Court, which is the highest court in the State of New Columbia. On appeal, SocialAI defends the Superior Court’s dismissal and argues the invalidity of the CAIR Act on both grounds raised below.

Analysis

There is no dispute that, within the meaning of the CAIR Act, SocialAI is an ICP covered by the law and that the zapper advertisement constitutes Flagged Information. Nor is there any

dispute that, according to the complaint’s factual allegations, SocialAI failed to comply with the requirements of Sections 3(a) and 3(b) of the Act. Instead, SocialAI argues that the CAIR Act, as applied to it in this case, is preempted by Section 230 and contravenes the First Amendment. We address both arguments in turn.

I. The CAIR Act is Preempted by Section 230 as Applied to SocialAI.

Because neither this Court nor the U.S. Supreme Court has previously interpreted the requirements of Section 230, the parties rely on decisions of other courts as persuasive authority. There is no dispute that SocialAI is an interactive computer service (“ICS”) within the meaning of Section 230(f)(2). Section 230(e)(3) expressly preempts all state laws that are “inconsistent” with Section 230’s requirements. Relying on cases such as *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101–02 (9th Cir. 2009), SocialAI argues that Section 230 preempts any law that regulates an ICS in its role as a “publisher” or “speaker” of third-party content and that the CAIR Act is such a law. We agree with that interpretation, which has been endorsed by nearly every federal circuit court to have addressed the issue.

This analysis effectuates both the statutory language and Congress’s intent when enacting Section 230. As correctly interpreted in *Barnes* and similar cases, unless a specific statutory exception applies (and none are raised in this case), Section 230 preempts all laws that treat interactive computer services as the “publishers” of information created by third parties. *See Barnes*, 570 F.3d at 1103; § 230(c)(1). Although SocialAI’s particular business model uses a computer algorithm to determine which third-party content it will publish on its site, the CAIR Act still treats SocialAI as the “publisher” of that content. Regardless of the acts and omissions that trigger its liability provisions, the CAIR Act unquestionably treats SocialAI as the publisher of the allegedly false and harmful information here. The Act forces SocialAI to review flagged content in a particular manner and make a decision regarding the permissibility of that content and then seeks

to hold SocialAI accountable for that content if it does not follow the Act’s mandates. The law thus imposes liability on SocialAI for content it did not create and treats SocialAI as a publisher of that content in direct violation of Section 230(c)(1). It is therefore clearly preempted by Section 230.

The CAIR Act is also inconsistent with Congress’s expressed intent when enacting Section 230 near the dawn of the Internet age. Section 230 was intended to ensure the continued growth and development of the Internet as had occurred up to its enactment “with a minimum of government regulation.” § 230(a)(4). Congress thus enacted Section 230 specifically “to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.” § 230(b)(2). The CAIR Act directly conflicts with those goals and, if allowed to stand, would hinder the free flow of information that is the very heart of the Internet.

II. The Application of the CAIR Act to SocialAI Violates the First Amendment to the United States Constitution.

SocialAI argues alternatively that even if not preempted by Section 230, the CAIR Act violates the First Amendment as applied to it. Because this constitutional question of first impression is of critical and immediate importance to the people of this State, this Court reaches the issue and affirms the Superior Court’s holding that the First Amendment is a further barrier to the application of the Act in this case.

First, the CAIR Act is an unconstitutional intrusion into SocialAI’s protected editorial decision making. In *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), the U.S. Supreme Court held that the decisions of social media companies as to what content to allow or remove constitute exercises of the companies’ editorial discretion that is protected First Amendment speech. *Id.* at 733–40. The Court furthermore reached this holding while recognizing that “[t]he platforms write algorithms to implement” their standards regarding content moderation. *Id.* at 735. Although the CAIR Act is not identical to the laws considered in *Moody*, the same basic analysis

applies. SocialAI has not given up its editorial discretion by implementing that discretion through the BRaiN system. SocialAI, moreover, continuously ensures that the BRaiN’s functioning aligns with the company’s policies through regular quarterly audits where changes to the model can, and do, occur. Complaint ¶ 19. Application of the CAIR Act to SocialAI would destroy its fundamental business model adopted in accordance with the overall editorial philosophy of its founder. Complaint ¶ 28.

Second, although the Superior Court declined to reach the issue, we hold that the requirement of Section 3(b) of the CAIR Act that SocialAI provide a “reasoned, responsive, and good faith explanation by a natural human being of the grounds for the decision” independently violates the First Amendment’s prohibition against compelled speech. SocialAI’s decisions about content moderation are inherently editorial and expressive. Explaining why content was allowed or removed would force it to take a position on a controversial topic that it has not chosen to express. *Cf.* Complaint ¶ 13. Contrary to the analysis of the dissent, this is not a simple factual disclosure, akin to a product warning requirement. Compelling such an explanation is a direct intrusion into Social AI’s expressive autonomy. *See, e.g., X Corp. v. Bonta*, 116 F.4th 888, 901–02 (9th Cir. 2024) (law requiring specific explanations for content moderation decisions would impermissibly “require a social media company to convey the company’s policy views on intensely debated and politically fraught topics, including hate speech, racism, misinformation, and radicalization, and also convey how the company has applied its policies”). While SocialAI is not being forced to endorse the zipper therapy, it is being forced to articulate its reasons for allowing or removing it, which is an expressive act. The fact that the reasons might be “factual” does not make the compulsion any less of a First Amendment violation, especially when those “facts” relate to subjective editorial judgments.

Conclusion

For the foregoing reasons, the Court AFFIRMS the Superior Court's judgment dismissing the complaint with prejudice and holds that the CAIR Act, as applied in this case (1) is preempted by Section 230 and (2) contravenes the First Amendment.

Justice Bumpstein, with whom Justice Grace joins, dissenting:

The Court’s analysis fails to properly apply Section 230 of the Communications Decency Act (“Section 230”) and incorrectly interprets the requirements of the First Amendment. I therefore respectfully dissent.

I. Section 230 Does Not Preempt the CAIR Act.

In any case involving a claim of federal statutory preemption, the Court must start “with the assumption that the historic police powers of the State were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.” *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). Here, moreover, Congress expressly provided that “[n]othing in [Section 230] shall be construed to prevent any State from enforcing any State law that is consistent with this section.” 47 U.S.C. § 230(e)(3). Drawing from federal appellate cases that are not binding on this Court, the majority adopts the view that Section 230 preempts any law that applies to a social media company in its role as a publisher of third-party content. In my view, Section 230 does not sweep that broadly—or even apply to this case.

The U.S. Supreme Court has never spoken on the proper interpretation of Section 230 and, as one of its Justices has noted, lower federal courts “have long emphasized nontextual arguments when interpreting § 230, leaving questionable precedent in their wake.” *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 14 (2020) (Thomas, J., respecting denial of certiorari). In my view, Section 230 does not preempt the CAIR Act because that Act does not attempt to hold SocialAI liable as the publisher or speaker of the content posted on its platform. Rather, the Act seeks only to ensure that SocialAI does not reflexively distribute and promote harmful material without any human review. The CAIR Act does not impose liability on SocialAI for publishing the “zapper” therapy content, let alone for the content itself, and the Act expressly states that it does not dictate whether SocialAI must allow or remove any content. *See*

CAIR Act § 5. Instead, the CAIR Act merely provides a reasonable regulation of the process by which SocialAI makes its final decisions regarding flagged, and therefore potentially harmful, third-party content. Without specifying any outcome, the Act only requires human oversight to ensure that decisions about such content are not solely made by opaque, autonomous algorithms, especially when, as here, those algorithms prioritize user engagement and revenue over safety.

Moreover, as applied here, the CAIR Act is triggered by SocialAI's own decision—made by the BRaiN under a general corporate policy that prioritizes revenue generation—to affirmatively and knowingly push harmful content to vulnerable users without any independent human review. As the Third Circuit has held, disagreeing with the *Barnes* analysis, Section 230 immunizes interactive content services “only to the extent that they are sued for information provided by another information content provider.” *Anderson v. Tiktok, Inc.*, 116 F.4th 180, 183 (3d Cir. 2024) (internal quotations omitted). In *Anderson*, Tiktok's independent algorithmic decision to promote a harmful “Blackout Challenge,” which the company knew about but failed to address, was its own action, and a complaint seeking to assess liability for that action lay outside of Section 230's preemptive scope. *Id.* at 184. Here, SocialAI's algorithmic decisions to promote a commercial advertisement featuring the zipper treatment to diabetes support group users, which was undertaken with SocialAI's knowledge and acquiescence, Complaint ¶ 20, are likewise the platform's own independent actions. Plaintiff is not attempting to hold SocialAI liable based on the content of information provided by others. *See Anderson*, 116 F.4th at 184; *see also Malwarebytes, Inc.*, 141 S.Ct. at 17 (2020) (Thomas, J.).

The CAIR Act is a consumer protection and public safety regulation. The Act regulates SocialAI's failure to implement any human review of Flagged Information, which resulted in the company actively pushing harmful material to vulnerable users, and the Act does not seek to

impose liability based on SocialAI as a publisher or speaker of that content. It is therefore not preempted by Section 230.

II. The CAIR Act Does Not Violate the First Amendment.

In my view, the Court also incorrectly interprets the First Amendment. Relying on *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), the Court holds that the CAIR Act impermissibly intrudes on SocialAI's editorial discretion and is therefore an impermissible content-based regulation prohibited by the First Amendment. I disagree. Based on the facts in the complaint, which we must take as true, the CAIR Act does not encroach on SocialAI's editorial discretion protected under the First Amendment. No person at SocialAI made any decision to retain the zipper advertisement or even provided an overall editorial policy under which the advertisements were deemed permissible. *See, e.g., Moody*, 603 U.S. at 746 (Barrett, J., concurring); *id.* at 767 (Alito, J., concurring). Instead, the BRaiN operates autonomously without any human oversight. When human discretion is entirely removed from content moderation decisions, the full force of the First Amendment no longer protects those decisions.

Nor did the Court in *Moody* hold otherwise. To the contrary, the Court remanded that case for further factual development and left open whether all algorithmic decisions qualify as protected free speech. Given that there is no blanket protection for all computer-implemented content decisions, SocialAI's system—which takes human beings entirely out of the loop and replaces them with an artificial BRaiN—plainly falls on the unprotected side of the line. The BRaiN makes all decisions about content on SocialAI's website and application such that even its own programmers cannot discern the reason for any decision, and the system also bases content exposure on predicted emotional reactions, tailoring user experiences for deeper psychological influence to generate more profit for SocialAI. Complaint ¶¶ 16, 17. Indeed, even after being notified by numerous users that the zipper advertisement was inaccurate and unsafe, SocialAI left it up to the BRaiN to

autonomously field the complaints and dismiss all concerns with a machine-generated, blanket response. Complaint ¶ 23.

Moreover, unlike in *Moody*, where the laws at issue attempted to regulate both the content and viewpoint of the companies' moderation decisions, the CAIR Act's requirements are content-neutral and therefore akin to time, place, and manner restrictions on the method of reviewing and proliferating information on the SocialAI platform. Because these regulations are content and viewpoint-neutral, they are not analyzed under strict scrutiny. *See Ward v. Rock Against Racism*, 491 U.S. 781 (1989). The CAIR Act satisfies the three-prong test applied to such regulations; its provisions are content-neutral and narrowly tailored to serve significant public safety interests of the state, and there are ample alternative channels for communication of the information. *Id.* at 791. The restrictions do not disfavor or favor any particular content. Additionally, as discussed in the CAIR Act and alleged in the complaint, the State has significant public safety interests in preventing the proliferation of harmful content that is autonomously disseminated by computerized systems, especially when it affects the public's health. And in any event, the only speech at issue here is an advertisement, which is commercial speech. Under the standards governing such speech, the CAIR Act easily passes muster because the advertisement is unquestionably misleading if not blatantly false. *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 564 (1980).

Finally, the CAIR Act's requirement of a reasoned explanation upon request is not compelled speech in violation of the First Amendment. As the U.S. Supreme Court has held, a state may require factual, noncontroversial disclosures if the requirements are reasonably related to the state's interest in preventing deception of consumers. *See Zauderer v. Off. of Disciplinary Couns.*, 471 U.S. 626, 651 (1985) (protecting individuals who may not understand the difference between attorney's fees and other costs when viewing an attorney's advertisement). That is all that

the CAIR Act's explanation requirement does. The State is not attempting to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Rather, it is requiring disclosure of factual information about a social media platform's content moderation policies to protect the platform's users. This modest requirement does not meaningfully infringe SocialAI's interests. *In re R.M.J.*, 455 U.S. 191, 201 (1982) ("warning[s] or disclaimer[s] might be appropriately required . . . in order to dissipate the possibility of consumer confusion or deception."). The Act's requirement of a reasoned explanation falls squarely within the State's interest in preventing consumer deception and future incidents of medical harm to citizens like Michelle Nickel. Thus, I would hold that the reasoned explanation requirement is not compelled speech in violation of the First Amendment.

I respectfully dissent.

No. 25-0001

SUPREME COURT OF THE UNITED STATES

Cindy Lieberman,
in her capacity as the Attorney General of New Columbia,

Petitioner,

v.

SocialAI, Inc.,

Respondent.

Order Granting Writ of Certiorari

On petition for a writ of certiorari to the Supreme Court of New Columbia, the petition is hereby **GRANTED**, limited to the following questions:

1. Whether Section 230 of the Communications Decency Act, 47 U.S.C. § 230, preempts New Columbia's Commonsense Artificial Intelligence Review Act as applied to Respondent SocialAI, Inc. in this case.
2. Whether New Columbia's Commonsense Artificial Intelligence Review Act violates the First Amendment to the United States Constitution as applied to Respondent SocialAI, Inc. in this case.

The Clerk of Court shall establish an accelerated briefing and argument schedule.

Dated: September 30, 2025

/s/Barry B. Benson Boone
Barry B. Benson Boone
Clerk of Court