My name is Darien Shanske, I'm the MLK professor of law at UC Davis and I'm honored to have the chance to testify before you. Just a few policy points and a few legal points, then happy to answer any questions now or in the future. This bill addresses a challenging question of how to tax social media platforms as such platforms, as you know, make up an increasing share of our economy. These platforms are in the business of bartering free services for data and attention on one side of their business and selling the data to advertisers on the other side. This bill proceeds from the very reasonable premise that this extraction of value should be taxed the way extraction of many other valuable natural resources are taxed. And this is before one considers that in this case the providers of the data are not paid for their data, although they do typically receive some free services in return. One reasonable way to think about this is that it is a consumer protection measure, the state is concerned that the public is not getting a fair deal. Alternatively, one might view this tax as a kind of moderate sin tax on the theory that this business model causes several externalities in terms of, for example, mental health.

Another way of thinking about this tax is that it's a backup tax to a profitable industry, similar to other taxes such as the corporate income tax. Note that it's common for taxes to have multiple rationales and for taxes to be based on reasonable approximations, as here. To use another example, proponents of the corporate income tax are themselves justified as loosely based on the ability to pay and also as backups to the personal income tax. This tax has a graduated structure, which makes sense and is common. The structure reflects at least two reasonable concerns, first, very small taxpayers have high levels of fixed costs, so it makes sense to exclude them altogether. Second, the value extracted is

related to the value of the network, so it makes sense for the larger networks to pay more.

Once one understands the policy issues, the legal issues become much easier. One likely argument in opposition to a bill like this sounds into ITFA, the Internet Tax Freedom Act yet once one understands that congress barred discrimination, this bill doesn't discriminate, as it applies to all social platforms, so it does no competitive harm between social platforms. In general, as to these legal arguments, there will be threats of litigation, likely litigation. But my general advice to legislatures is that federalism concerns weigh in favor of the state revenue power, and it would be inappropriate for legislators to give up on sound tax policy in the face of novel legal arguments that will ultimately be defeated.