No. _____

In the Supreme Court of the United States

NETCHOICE,
Applicant,

v.

LYNN FITCH, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF MISSISSIPPI,
Respondent.

On Application to the Honorable Samuel A. Alito, Jr.,
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Fifth Circuit

EMERGENCY APPLICATION OF NETCHOICE FOR IMMEDIATE TEMPORARY ADMINISTRATIVE RELIEF AND VACATUR OF FIFTH CIRCUIT'S STAY OF PRELIMINARY INJUNCTION

Jared B. Magnuson
LEHOTSKY KELLER COHN LLP
3280 Peachtree Road NE
Atlanta, GA 30305

Scott A. Keller
Counsel of Record
Steven P. Lehotsky
Jeremy Evan Maltz
LEHOTSKY KELLER COHN LLP
200 Massachusetts Ave. NW, Suite 700
Washington, DC 20001
(512) 693-8350
scott@lkcfirm.com

Counsel for Applicant NetChoice

IDENTITY OF PARTIES, CORPORATE DISCLOSURE STATEMENT, AND RELATED PROCEEDINGS

Applicant is NetChoice. Pursuant to Rule 29.6, Applicant states that it is a District of Columbia nonprofit trade association for internet companies. NetChoice's mission is to promote online commerce and speech and to increase consumer access and options via the internet, while also minimizing the burdens that would prevent businesses from making the internet more accessible and useful. NetChoice has no parent corporation, and no publicly held company has 10% or greater ownership in this entity.

Respondent is Lynn Fitch, in her official capacity as Attorney General of Mississippi.

The related proceedings are:

NetChoice, LLC v. Fitch, No. 1:24-cv-00170-HSO-BWR (S.D. Miss. July 1, 2024) (order granting preliminary injunction based on facial challenge)

NetChoice, LLC v. Fitch, No. 1:24-cv-00170-HSO-BWR (S.D. Miss. June 18, 2025) (order granting preliminary injunction based on as-applied challenge)

NetChoice, L.L.C. v. Fitch, No. 24-60341 (5th Cir. Apr. 17, 2025) (order vacating preliminary injunction of facial challenge)

NetChoice, L.L.C. v. Fitch, No. 25-60348 (5th Cir. July 17, 2025) (order staying preliminary injunction pending appeal)

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TO THE HONORABLE SAMUEL A. ALITO, JR.,
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

NetChoice respectfully requests emergency relief to maintain the status quo, in which both minors and adults can access and engage in fully protected expression online, free from governmental interference. NetChoice requests (1) temporary administrative relief, vacating the Fifth Circuit's stay while the Court considers this Application; and then (2) an order vacating the Fifth Circuit's stay of the district court's preliminary injunction of a Mississippi law creating content-based barriers to accessing fully protected speech online, thus leaving the district court's injunction in force pending this Court's eventual disposition of any petition for writ of certiorari from this Fifth Circuit appeal. Respondent will *not* agree to voluntarily stay enforcement of this law while the Application is pending.

INTRODUCTION

In a one-sentence order, the Fifth Circuit upended the First Amendment rights of Mississippi citizens seeking to access fully protected speech across social media websites. The content-based Mississippi House Bill 1126 (2024) ("Act") imposes age-verification and parental-consent requirements on adults and minors wishing to engage with protected expression on social media websites—distinct from what the Act calls "news," "sports," and "online video game" websites. On top of that, the Act imposes monitoring-and-censorship requirements over the protected speech accessible by minors on those websites—placing the State as overseer of websites' content-moderation policies. The Act backs up these restrictions with $10,000 civil penalties per violation and even *criminal* penalties. In a careful decision, the district court

preliminarily enjoined Respondent Mississippi Attorney General from enforcing those restrictions against nine specific NetChoice-member websites. That decision faithfully applied this Court's precedents, and it matched decisions reached by seven other courts that have enjoined enforcement of similar state laws restricting access to protected speech on social media websites. These websites are, for some, the "principal sources for . . . exploring the vast realms of human thought and knowledge." *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017). And they disseminate a "staggering amount" of fully protected speech, across "billions of posts or videos." *Moody v. NetChoice, LLC*, 603 U.S. 707, 719, 734 (2024). Whatever authority States may have to restrict access to speech *un*protected for minors, States may not dictate what fully protected speech is appropriate for minors. Yet this Mississippi Act does just that in four ways prohibited by the First Amendment.

First, the Act's parental-consent requirements for minors to create social media accounts, § 4(2),[1] violates this Court's instruction that minors "are entitled to a significant measure of First Amendment protection" and that States lack "power to prevent children from hearing or saying anything *without their parents' prior consent*." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 794, 795 n.3 (2011) (citation omitted).

Second, the Act's age-verification requirement for adults and minors to create accounts on social media websites, § 4(1), violates this Court's recognition that government-mandated "age verification necessarily" "burden[s]" First Amendment rights to access protected speech and, in the context of a content-based law restricting

[1] All similar citations refer to Mississippi House Bill 1126. *See* App.102a-14a.

access to "fully protected speech," triggers strict scrutiny. *Free Speech Coal., Inc. v. Paxton*, 2025 WL 1773625, at *12, *16 (U.S. June 27, 2025) ("*FSC*").

Third, the Act's monitoring-and-censorship requirements for vague categories of protected speech, § 6, violate precedent holding that "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Brown*, 564 U.S. at 790-91 (citation omitted). The State cannot replace websites' voluntary "content moderation"—choices about whether and how to disseminate speech—with a mandate to censor based on protected speech's content or viewpoint.

Fourth, the Act's coverage definition selects websites for regulation based on the content of speech they disseminate, triggering strict scrutiny, which the Act's speech restrictions cannot satisfy. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

This precedent amply supports why the district court concluded the Act is likely unconstitutional as applied to NetChoice members' nine covered websites and preliminarily enjoined Respondent's enforcement of this Act. But the Fifth Circuit stayed the district court's preliminary injunction in a one-sentence, unreasoned order. Neither NetChoice nor this Court can know why the Fifth Circuit believed this law satisfies the First Amendment's stringent demands or deviated from the seven other decisions enjoining similar laws. *E.g.*, *NetChoice v. Carr*, 2025 WL 1768621 (N.D. Ga. June 26, 2025); *Comput. & Commc'ns Indus. Ass'n v. Uthmeier*, 2025 WL 1570007 (N.D. Fla. June 3, 2025); *NetChoice, LLC v. Yost*, 2025 WL 1137485 (S.D. Ohio Apr. 16, 2025); *NetChoice, LLC v. Griffin*, 2025 WL 978607 (W.D. Ark. Mar. 31, 2025); *NetChoice, LLC v. Bonta*, 2025 WL 807961 (N.D. Cal. Mar. 13, 2025); *Comput. & Commc'ns Indus. Ass'n v. Paxton*, 747 F. Supp. 3d 1011 (W.D. Tex. 2024); *NetChoice,*

LLC v. Reyes, 748 F. Supp. 3d 1105 (D. Utah 2024).

The Fifth Circuit's stay order threatens immediate, irreparable injury. To avoid liability, NetChoice's regulated members would have to implement the Act's restrictions, burdening all Mississippians' access to "billions" of "posts" containing fully protected speech. *Moody*, 603 U.S. at 719, 734. And the Act will prevent access to that expression for some users entirely—including those unwilling or unable to verify their age and minors who cannot secure parental consent. In addition to the immediate loss of First Amendment rights, the websites also face irreparable harm from enormous, "nonrecoverable" compliance costs. *Ohio v. EPA*, 603 U.S. 279, 292 (2024) (cleaned up). For some NetChoice members, the Act's compliance costs are "far in excess of [their] available budget." App.227a.

This is the second time in recent years that the Fifth Circuit has, without explanation, stayed an injunction of a state social media law. *See NetChoice, LLC v. Paxton*, 142 S. Ct. 1715, 1715-16 (2022). The Fifth Circuit's unexplained stay order deprives NetChoice, its members, and their users of the "careful review and a meaningful decision" to which they are "entitle[d]." *Nken v. Holder*, 556 U.S. 418, 427 (2009).

So as the Court did in *NetChoice, LLC v. Paxton*, it should grant this Application to prevent an unwarranted *unreasoned* stay of the *reasoned* preliminary injunction decision here. That would preserve the status quo that prevailed before Mississippi attempted to fundamentally alter how its citizens can access fully protected online speech and allow an orderly appellate process to proceed. *Dayton Bd. of Educ. v. Brinkman*, 439 U.S. 1358, 1359 (1978) (Rehnquist, J., in chambers) ("maintenance of the status quo is an important consideration").

OPINION BELOW

The district court's order is available at 2025 WL 1709668 and reproduced at App.4a-38a. The Fifth Circuit's stay order is unreported and reproduced at App.2a.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §§ 1254(1), 1651, and 2101(f), and Supreme Court Rule 23.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Pertinent constitutional and statutory provisions are reprinted at App.100a-14a.

STATEMENT

A. Factual background

Regulated actors and their fully protected speech. Applicant NetChoice is an internet trade association. The Act's regulatory scope covers nine websites operated by NetChoice members: (1) Dreamwidth; (2) Facebook; (3) Instagram; (4) Nextdoor; (5) Pinterest; (6) Reddit, (7) Snapchat; (8) X; and (9) YouTube. *See* App.5a.

These are the kinds of "social media" websites that people have a right to "access" because they serve as vital places where users can access and interact with vast amounts of protected expression. *See Packingham*, 582 U.S. at 108. They "allow users to upload content . . . to share [it] with others." *Moody*, 603 U.S. at 719. Consequently, they disseminate "billions of posts or videos," providing users an important means of sharing a "staggering" amount of their own protected expression. *Id.* at 719, 734. Similarly, these websites "engage[] in expression" by "display[ing]," "compil[ing,] and curat[ing]" protected speech. *Id.* at 716-17, 728; App.232a-34a.

Teens and adults use these websites to engage in a broad range of fully protected

speech. *E.g.*, App.232a-34a. Dreamwidth allows users to share their creative writing and artwork. App.207a. "On Facebook, . . . users can debate religion and politics with their friends and neighbors or share vacation photos." *Packingham*, 582 U.S. at 104. Instagram allows people to post and view photos and videos, learn about and advocate for the causes they care about, showcase their art or athletic talent, and hear from their local government officials. On Nextdoor, users can connect with neighbors and share local news. App.193a. Pinterest allows users to explore recipes, home decor, and more. On Reddit, users may access hundreds of thousands of user-created and led communities on all subjects. Snapchat allows users to have digital conversations with friends and family in ways that replicate real-life interactions. On X, "users can petition their elected representatives and otherwise engage with them in a direct manner." *Packingham*, 582 U.S. at 104-05. And YouTube endeavors to show people the world, from travel documentaries to cooking instructions. App.167a.

Parental options to oversee minor children online. "[P]arents may rightly decide to regulate their child's use of social media—including restricting the amount of time they spend on it, the content they may access, or even those they chat with. And many tools exist to help parents with this endeavor." *Griffin*, 2025 WL 978607, at *3.

The district court found that many such tools are available to parents to control what content their children see, and for how long. App.27a. To start, parents can control minors' access to *devices*. App.234a. Devices come with parental-control options, including the ability to lock or limit specific apps and websites, limit content, and set overall or time-of-day usage limits. *Id.* Parents can also control the *networks* that minors use. Wireless routers allow parents to manage which network a minor

connects to and to set up rules defining which websites minors can use (and when). App.234a-35a. Many internet service providers offer similar controls. *Id.* Parents can also control *software*. Web browsers offer parental controls. App.235a-36a. And third-party parental control software is available for many devices. App.236a-37a.

In addition, many members have developed their own suite of parental controls and other protections for minors on their services, further enabling parents to make their own decisions about what type of online access is most appropriate for their family. *E.g.*, App.170a-77a; App.237a.

Members' voluntary efforts to address harmful and objectionable speech. NetChoice members also address potentially harmful speech through "content moderation" to enhance the value of the content that their users access on their websites. Specifically, members have put in place important mechanisms to address and—as appropriate—remove nudity and sexual content, self-harm, substance abuse, harassment and bullying, and child exploitation. App.176a-77a; App.195a-97a; App.214a-17a, 218a-19a, 222a-24a; App.238a-47a. In fact, members' efforts address all manner of speech they consider harmful and left unregulated by the Act, including hate speech. *E.g.*, App.247a-48a. Members' efforts are effective, especially considering the inherent difficulties of content moderation at the scale of many members' websites. App.248a-50a; *see Moody*, 603 U.S. at 738-39 (noting scale of removed content). Restricting and removing such objectionable content is no small task. It is an iterative process, requiring websites often to consider context, intent, and other factors when determining whether content violates websites' policies. App.250a.

B. Mississippi House Bill 1126 (2024)

The Act's scope. The Act here has a "targeted scope," limited to "social media," as Respondent acknowledges. App.264a, 268a. The Act regulates a content-based collection of "digital services" that "allow[] users to socially interact with other users." § 3(1). In other words, it regulates precisely the kinds of "social media" websites this Court has held people have a right to access because of the vast amounts of protected speech available on the websites. *Packingham*, 582 U.S. at 108.

Specifically, the Act applies to any entity that (1) "[o]wns or operates a digital service" and (2) "[d]etermines" both the "purpose" and "means" of "collecting and processing [users'] personal identifying information." § 2(a)-(b). A "digital service" is "a website, an application, a program, or software that collects or processes personal identifying information." § 2(a). But the Act only regulates "digital services" that:

> (a) Connect[] users in a manner that allows users to socially interact with other users on the digital service;
>
> (b) Allow[] a user to create a public, semi-public or private profile for purposes of signing into and using the digital service; and
>
> (c) Allow[] a user to create or post content that can be viewed by other users of the digital service, including sharing content on: (i) A message board; (ii) A chat room; or (iii) A landing page, video channel or main feed that presents to a user content created and posted by other users.

§ 3(1). The Act also excludes websites based on their content—those that "primarily function[] to provide a user with access to":

> (c)(i) . . . news, sports, commerce, online video games or content primarily generated or selected by the [website]; and (ii) Allows chat, comment or other interactive functionality that is incidental to the digital service; or
>
> (d) . . . career development opportunities, including: . . . (i) Professional networking.

§ 3(2). In other words, the Act expressly regulates only those services that are traditionally understood as "social media."[2]

The Act regulates covered social media websites by burdening and restricting access to speech in three ways most relevant here.

Age verification. § 4(1). Covered websites "shall make commercially reasonable efforts to *verify* the age of the person creating an account with a level of certainty appropriate to the risks that arise from the information management practices of the" website. § 4(1) (emphasis added). This requirement to *verify* ages is separate from the Act's requirement that users "*register*" their ages. *See id.* (emphasis added). So the age-verification required by the Act entails something more than asking for self-declared age. Because users create accounts on members' websites to speak and access some or all of the content on the services, this provision will require users to verify their ages before engaging in or viewing expression they are constitutionally entitled to view free from governmental restraint. App.194a; App.208a-09a; App.251a.

Parental consent. § 4(2). Covered websites "shall not permit an account holder who is a known minor to be an account holder unless the known minor has the express consent from a parent or guardian." § 4(2). A "known minor" is any unemancipated minor the website "knows to be a minor." § 2(d). The Act enumerates five "acceptable methods of obtaining express consent," plus a sixth catch-all. § 4(2). Members' covered services do not currently require parents to affirmatively provide their consent before

[2] Accordingly, this *as-applied* challenge is unlike *Moody* for the additional reason that it is clear "what [] the laws have to say" about other "kinds of" services "beyond [] social-media." 603 U.S. at 718, 725. This Act does not cover them.

allowing teenagers on the services regulated here. *E.g.*, App.186a. So this provision will force teenagers to obtain parental consent to engage in and interact with protected expression—even though the First Amendment protects their ability to speak and be spoken to without parental consent. *See Brown*, 564 U.S. 795 n.3.

Monitoring and censorship. § 6. Covered websites "shall make commercially reasonable efforts to develop *and implement* a strategy to prevent or mitigate [] known minor[s'] *exposure to* harmful material and other *content* that promotes or facilitates the following harms to minors":

> (a) Consistent with evidence-informed medical information, the following: self-harm, eating disorders, substance use disorders, and suicidal behaviors;
>
> (b) Patterns of use that indicate or encourage substance abuse or use of illegal drugs;
>
> (c) Stalking, physical violence, online bullying, or harassment;
>
> (d) Grooming, trafficking, child pornography, or other sexual exploitation or abuse;
>
> (e) Incitement of violence; or
>
> (f) Any other illegal activity.

§ 6(1) (emphases added). "[H]armful material" corresponds to Mississippi's legal definition of obscenity for minors. § 2(c) (incorporating Miss. Code § 11-77-3(d)).

Based on its plain text, these provisions necessarily require covered websites to monitor for and censor speech accessible to minors. The only way to "prevent" minors' "exposure to" content is by not disseminating it to minors—that is, censoring that content on minors' accounts. § 6(1). And the only way to censor such content on members' websites (and other covered websites) is to monitor for that content.

Confirming this interpretation, the Act specifies that the monitoring-and-censorship requirements will not preclude: "(a) Any minor from deliberately and independently searching for, or specifically requesting, content; or (b) . . . [a covered website] providing resources for the prevention or mitigation of the harms described [above], including evidence-informed information and clinical resources." § 6(2).[3]

Enforcement and penalties. The Act designates violations as "unfair or deceptive trade practices." § 8. Respondent may seek injunctive relief, civil monetary penalties up to $10,000 per violation, and even *criminal* penalties under Mississippi's deceptive trade practices statute. *See* Miss. Code §§ 75-24-9, -19 to -20.

C. Procedural history

Facial challenge. The Mississippi Governor signed the Act into law on April 30, 2024, with a July 1, 2024, effective date. NetChoice sued and moved for a preliminary injunction. In a detailed decision issued the same day that this Court decided *Moody*, the district court held that the law was likely *facially* unconstitutional. App.59a-98a.

On appeal, the Fifth Circuit vacated that injunction without addressing the First Amendment merits. Notably, the Fifth Circuit did not grant Respondent's motion to stay the first preliminary injunction. App.56a. Instead, the Fifth Circuit concluded in a full opinion that, because the district court ruled on NetChoice's "facial challenge" the same day that "*Moody* . . . reframed the analysis for facial challenges," it "understandably did not conduct [*Moody*'s] analysis" for facial challenges. *NetChoice, L.L.C. v. Fitch*, 134 F.4th 799, 809 (2025). The Fifth Circuit thus remanded for the district

[3] The Act also regulates data-use and -collection. § 5.

court to "resolve" a "factual inquiry" pertinent to the *facial* challenge—which was the only pending challenge. *Id.*

As-applied challenges. On remand, NetChoice did two things. First, it amended its complaint to *add as-applied* claims for the nine NetChoice-member covered websites, heeding this Court's suggestion to bring an "as-applied challenge" entailing a different analysis. *Moody*, 603 U.S. at 718. Second, NetChoice complied with the Fifth Circuit's request to provide more information about "whether the Act applies to [other websites]." *Fitch*, 134 F.4th at 808; *e.g.*, App.252a-53a.

After briefing, the district court again issued a detailed opinion, concluding the Act is "unconstitutional *as applied* to certain of Plaintiff NetChoice, LLC's members." App.4a (emphasis added); *see* App.4a-38a. It reasoned that because "it need not reach the facial challenge in order to fully protect the litigants, . . . it will refrain from doing so in order to avoid 'unnecessary adjudication of constitutional issues.'" App.36a (quoting *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 478 (1995)). As a result, it enjoined Respondent's enforcement of the Act against the nine covered websites operated by NetChoice members, identified above at p.5.

On July 2, 2025, Respondent asked the Fifth Circuit to stay the preliminary injunction, and on July 14, 2025, NetChoice opposed Respondent's motion. Three days later—and less than one hour after Respondent filed a reply brief—a Fifth Circuit motions panel granted a stay in a one-sentence order. App.2a.

REASONS FOR GRANTING THE APPLICATION

This Court should vacate the Fifth Circuit's order staying the district court's preliminary injunction. That would allow NetChoice members to continue disseminating

speech to users free from unconstitutional restraints, preserving the status quo for how Mississippi residents access the "billions of posts" of fully protected speech available on the nine websites covered by the district court's injunction. *Moody*, 603 U.S. at 734. NetChoice satisfies all necessary requirements: (1) NetChoice "is likely to succeed on the merits"; (2) NetChoice's members and their users "will suffer irreparable injury without a stay"; (3) vacatur will not "substantially injure" Respondent; and (4) "the public interest lies" in protecting the First Amendment rights of NetChoice covered members and their many users. *Ohio*, 603 U.S. at 291.

I. This Court should vacate the Fifth Circuit's unreasoned stay order to preserve orderly appellate review of important First Amendment issues.

This Application can be granted for the sole reason that the Fifth Circuit's one-sentence order is unexplained. *See Nken*, 556 U.S. at 427. Just as this Court vacated the Fifth Circuit's unreasoned stay of the preliminary injunction in *NetChoice, LLC v. Paxton*, it should do so here to allow for an orderly appellate process. 142 S. Ct. at 1715-16.

As *Nken* explained, appellate courts may not enter stays pending appeal "reflexively," but only after the movant has satisfied its "heavy burden," and only after the panel has conducted "careful review" and issued a "meaningful decision." 556 U.S. at 427; *see id.* at 439 (Kennedy, J., concurring). Yet, in stark contrast to the two extensively reasoned district court opinions in this case, the Fifth Circuit's order (entered less than an hour after Respondent submitted a reply brief) explains nothing. This is particularly troubling in the context of a decision with sudden and sweeping implications for accessing fully protected speech.

Furthermore, the Fifth Circuit's unreasoned stay order disrupts what had been an orderly consideration of challenges to numerous similar laws enacted by other States. Several lower courts have enjoined laws restricting online speech, with virtually identical parental-consent, age-verification, and monitoring-and-censorship restrictions imposed on social media websites. Seven decisions awarding injunctions are currently on appeal.[4] But until now, not one of the appellate courts *stayed the injunction*. For instance, the Texas Attorney General appealed a preliminary injunction of a substantially similar monitoring-and-censorship requirement and did *not* seek a stay of the preliminary injunction pending appeal in the Fifth Circuit. *Comp. & Commc'ns Indus. Ass'n v. Paxton*, No. 24-50721 (5th Cir.).[5]

In total, litigation over these laws has allowed parties to fully brief the legal issues and has given courts time to consider all the issues as part of an orderly review process *before* these laws go into effect and disrupt the normal course of how Americans access protected speech online. The result of that orderly process has been a series of thorough opinions, in which the lower courts have recognized the grave First Amendment problems with laws like this Act. The district court here was no different, issuing *two* such decisions during this case. Here, however, the Fifth Circuit has sent

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[4] *E.g.*, *NetChoice LLC v. Att'y Gen., State of Ga.*, No. 24-12273 (11th Cir.); *Comp. & Commc'ns Indus. Ass'n v. Att'y Gen., State of Fla.*, No. 25-11881 (11th Cir.); *NetChoice, LLC v. Yost*, No. 25-03371 (6th Cir.); *NetChoice, LLC v. Griffin*, No. 25-01889 (8th Cir.); *NetChoice, LLC v. Bonta*, No. 25-00146 (9th Cir.); *NetChoice v. Brown*, No. 24-04100 (10th Cir.).

[5] Other cases are proceeding to the merits in the district court, often with injunctions or non-enforcement agreements in place. *E.g.*, *NetChoice v. Murrill*, No. 3:25-cv-00231-JWD-RLB (M.D. La.).

the orderly appellate process into chaos by issuing a one-sentence order allowing the Mississippi Attorney General to enforce the Act immediately. App.2a.

This Court should therefore vacate the Fifth Circuit's stay order to restore the orderly appellate process. The Act violates multiple First Amendment doctrines, and NetChoice meets all the traditional vacatur factors. But vacatur is warranted here even apart from those factors. Mississippi should not be allowed to transform the internet before even one judge has explained why Mississippi's effort to stifle users' access to protected expression complies with the First Amendment and why the judicial consensus is wrong.

II. The Court is likely to grant certiorari review if the Fifth Circuit ultimately upholds the Mississippi Act's content-based restrictions on accessing and disseminating fully protected speech on social media websites.

This Court is likely to review any decision upholding this Act's content-based restrictions on accessing the staggering amount of fully protected speech available on the social media websites covered by the district court's injunction. So there is "a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam).

This Court routinely grants review of lower courts' important First Amendment rulings, even in the absence of square circuit splits. *E.g.*, *Harris v. Quinn*, 573 U.S. 616, 627 (2014) (granting certiorari not to resolve a split, but rather "[i]n light of the important First Amendment questions these laws raise"); *Snyder v. Phelps*, 562 U.S. 443, 451 (2011); *United States v. Stevens*, 559 U.S. 460, 468 (2010); Pet. For Writ of Certiorari, *Brown v. Ent. Merchs. Ass'n*, 2009 WL 1430036, at *5 (U.S. May 19, 2009)

(noting "lack of a split among the circuit courts"). The Fifth Circuit's apparent approval of restrictions on minors' and adults' access to massive amounts of fully protected online speech—and governmental requirements to censor speech—raises sufficiently important First Amendment questions. That is especially true in light of the multiple nearly identical state laws raising the same questions.

As explained throughout this Application, the Fifth Circuit "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). For age verification, the Act conflicts with this Court's holding that "submitting to age verification is a burden on the exercise of" the "right to access speech" protected by the First Amendment. *FSC*, 2025 WL 1773625, at *11. Unlike *FSC*, this content-based Act requires age-verification to access "a staggering amount" of fully protected speech. *Moody*, 603 U.S. at 719. And the Fifth Circuit's decision runs contrary to this Court's observation that the States cannot suppress "[s]peech that is neither obscene as to youths nor subject to some other legitimate proscription . . . solely to protect the young from ideas or images that a legislative body thinks unsuitable for them." *Erznoznik v. Jacksonville*, 422 U.S. 205, 213-14 (1975).

For parental consent, Mississippi has flouted this Court's observation in *Brown* that minors "are entitled to a significant measure of First Amendment protection," and States lack the "power to prevent children from hearing or saying anything *without their parents' prior consent*." *Brown*, 564 U.S. at 794-95 & n.3 (citation omitted).

The monitoring-and-censorship requirements violate the bedrock rule that governments cannot penalize the dissemination of categories of protected speech that contain state-disfavored content or viewpoints—repeated in more cases than can be

cited. *E.g.*, *id.* at 799 ("It is rare that a regulation restricting speech because of its content will ever be permissible." (citation omitted)). In addition, forcing covered websites to engage in the state-preferred version of monitoring content on their services violates this Court's holding that governments cannot restrict the "ability of social-media platforms to control whether and how third-party posts are presented to other users." *Moody*, 603 U.S. at 717. And it conflicts with this Court's reaffirmation that, when the government cannot censor protected speech "directly," it cannot "coerce" private actors to suppress "speech on [government's] behalf." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 190 (2024) (citation omitted).

Finally, the Fifth Circuit's decision "[c]onflict[s] with the decision[s] of [other] United States court of appeals on the same important matter[s]." Sup. Ct. R. 10(a). For example, long after this Court conclusively settled minors' "right to speak or be spoken to without their parents' consent," *Brown*, 564 U.S. at 795 n.3, the Fifth Circuit has belatedly created a new circuit split about parental-consent requirements for minors to access protected speech. *See Ent. Software Ass'n v. Swanson*, 519 F.3d 768 (8th Cir. 2008); *Interactive Digit. Software Ass'n v. St. Louis*, 329 F.3d 954 (8th Cir. 2003); *Am. Amusement Mach. Ass'n v. Kendrick*, 244 F.3d 572 (7th Cir. 2001). To the extent there are no square circuit splits about *social media* laws, that is because the Fifth Circuit panel here diverged from the lower court consensus and leapfrogged ahead of other courts engaged in merits considerations of other state laws.

III. The Fifth Circuit's stay order is demonstrably wrong, and NetChoice is likely to succeed on the merits of its claims.

The Fifth Circuit's unreasoned stay order permits enforcement of a law violating

the First Amendment many times over. The Act unconstitutionally imposes content-based parental-consent, age-verification, and monitoring-and-censorship requirements for vague categories of speech on social media websites.

Given the glaring constitutional deficiencies, the district court's preliminary-injunction ruling thus correctly held the Act unconstitutional as applied to the nine NetChoice-member covered websites. To satisfy the strict scrutiny that applies to content-based restrictions on protected speech, Respondent must show that the State has "[1] adopt[ed] the least restrictive means of [2] achieving a compelling state interest." *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021) (cleaned up) ("*AFP*"). Respondent cannot carry her burden, as the Act is both overbroad and underinclusive to serve any legitimate governmental interest. Even if strict scrutiny did not apply, governmental restrictions on "access to" social media websites are "enough" to raise—at minimum—intermediate First Amendment scrutiny. *Packingham*, 582 U.S. at 105-06; *see FSC*, 2025 WL 1773625, at *11. The Act cannot satisfy intermediate scrutiny, because it is not "narrowly tailored to serve a significant governmental interest." *Packingham*, 582 U.S. at 105-06 (citation omitted). Under either form of scrutiny, "[w]hen[ever] the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *FEC v. Cruz*, 596 U.S. 289, 305 (2022) (citation omitted).

A. The Act's parental-consent requirement for minors to access fully protected speech violates the First Amendment.

1. The Act violates the First Amendment by requiring minors to secure parental consent before becoming "an account holder"—before accessing the enormous amount

of protected speech on covered websites. § 4(2). This is akin to the government requiring bookstores, theaters, and video game arcades—and *only* such similar companies dedicated to disseminating fully protected speech—to verify parental consent before allowing minors to engage in protected speech activities.

This Court has held that minors have the "right to speak or be spoken to," and governments lack the "power to prevent children from hearing or saying anything *without their parents' prior consent*." *Brown*, 564 U.S. at 795 n.3. *Brown* invalidated a law prohibiting the sale or rental of "violent video games" to minors, while permitting minors to play such games with parental consent. *See id.* at 802. After all, "minors are entitled to a significant measure of First Amendment protection." *Id.* at 794 (cleaned up). Conditioning minors' access to protected speech on parental consent is impermissible, whether that speech is "political rall[ies]," "religious" services, or content the State disfavors. *Id.* at 795 n.3. As this Court explained, there is no "precedent for state control, uninvited by parents, over a child's speech." *Id.*

Since *Brown*, the lower courts have consistently enjoined parental-consent requirements for minors to access social media. In doing so, courts have recognized the reality that social media is a prime outlet for minors' political speech: "Minors, who cannot vote for the lawmakers that represent them, can use social media to make their voices heard on issues that affect them, like school shootings and school choice." *Griffin*, 2025 WL 978607, *13. Parental-consent laws in both Arkansas and Ohio have been permanently enjoined. *Id.* at *8; *Yost*, 2025 WL 1137485, at *24. Similar requirements are preliminarily enjoined in Georgia, *Carr*, 2025 WL 1768621, at *13; Florida, *Uthmeier*, 2025 WL 1570007, *15; and Utah, *Reyes*, 748 F. Supp. 3d at 1126 & n.135.

This Act's materially identical parental-consent requirement violates the First Amendment for the same reasons. It would impose an unconstitutional hurdle for minors to access protected speech, outright prohibiting access for some minors. Under the Act, minors would need to secure parental consent before, *e.g.*, discussing their faith in religious forums, "petition[ing] their elected representatives" on X, "shar[ing] vacation photos" on Facebook, looking for work around the neighborhood on Nextdoor, or learning how to solve math problems on YouTube. *Packingham*, 582 U.S. at 104.

Respondent cannot hide behind the Act's provision requiring just "commercially reasonable" parental-consent mechanisms. § 4(2)(f); *see* App.276a-77a. *Any* form of state-mandated parental-consent (*i.e.*, "*governmental* authority, subject only to a parental veto") would unconstitutionally restrict *users' access* to speech under *Brown*, which alone sustains this challenge. 564 U.S. at 795 n.3. So even if *websites* could provide parental consent in some "commercially reasonable" fashion (an undefined term), this still unconstitutionally burdens *minor users'* First Amendment rights. *Brown* would not have come out differently had California asked for "commercially reasonable" parental consent. *Id.* at 795 n.3, 802.

Similarly, any parental-consent requirement to access social media burdens websites' right to disseminate fully protected speech. Censorship requirements do not comply with the First Amendment even if certain companies can afford the government's mandates. The law is clear that governments cannot restrict speech simply because a publisher can afford it. *E.g.*, *Minneapolis Star & Trib. Co. v. Minn. Commn'r of Revenue*, 460 U.S. 575, 592 (1983).

Contrary to Respondent's argument below, *FSC* did not hold that States' "powers

to protect minors necessarily include" *all* "the power to employ the ordinary and appropriate means of achieving these ends," including restrictions on fully protected speech like parental-consent requirements. App.278a (cleaned up). This Court in *FSC* did not overrule *Brown*—it cited *Brown* approvingly. 2025 WL 1773625, at *12. In *Brown*, California restricted access to "violent video games" to prevent "harm to minors." 564 U.S. at 799. The Court rejected California's parental-consent requirements, in part because "speech about violence *is not obscene*." *Id.* at 793 (emphasis added). *FSC*, by contrast, was expressly premised on the fact that the speech being regulated was "*obscene to minors*"—a point this Court emphasized repeatedly. 2025 WL 1773625, at *8-9 (emphasis added). So although "a State possesses legitimate power to protect children from harm, [] that does not include a free-floating power to restrict the ideas to which children may be exposed. Speech that is n[ot] obscene as to youths . . . cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable.'" *Brown*, 564 U.S. at 794-95 (cleaned up).

2. Because the Act's parental-consent requirement "target[s] . . . fully protected speech," it triggers and fails "[s]trict scrutiny," which, "as a practical matter, [] is fatal in fact absent truly extraordinary circumstances." *FSC*, 2025 WL 1773625, at *12. The Act's parental-consent requirement cannot satisfy such scrutiny—or indeed any form of heightened scrutiny.

To start, the State lacks a sufficient governmental interest. This Court has rejected a governmental interest "in aid of parental authority" to restrict minors' access to protected speech unless parents first consent. *Brown*, 564 U.S. at 802. *Brown* "note[d]" its "doubts that punishing third parties for conveying protected speech to

children *just in case* their parents disapprove of that speech is a proper governmental means of aiding parental authority." *Id.* As the Court explained, accepting that argument "would largely vitiate the rule that 'only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to [minors].'" *Id.* (quoting *Erznoznik*, 422 U.S. at 212-13). And not all minors "have parents who *care* whether" they access covered websites. *Id.* at 804.

Even if that were a permissible governmental interest, however, the Act does not further it. The Act does not account for the difficulty of verifying a parent-child relationship to process parental consent. And "[d]isputes about the identity of an account holder, their age, or the legal relationship between them and the person claiming to be their parent are complex, time-consuming, costly . . . , and unfortunately common." App.227a. These difficulties are compounded when, *e.g.*, families are nontraditional (such as foster families), families have different last names, parents disagree about consent, minors are unsafe at home, or parental rights are terminated. *See* App.254a. Respondent rejoined that "[t]here is no need to verify the parental relationship." App.281a. But if services need not verify that a minor's actual parent has consented, the Act cannot "promot[e] parental oversight." *Contra* App.281a.

In all events, the Act's parental-consent requirement is not the "least restrictive" way to accomplish any legitimate governmental ends. *AFP*, 594 U.S. at 607 (citation omitted). As the district court found, parents already have many options to oversee their children online. *See supra* pp.6-7; App.27a. That finding tracks the findings of other lower courts. *See NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1121 (9th Cir. 2024); *Carr*, 2025 WL 1768621, at *18; *Uthmeier*, 2025 WL 1570007, at *18; *Yost*, 2025 WL

1137485, at *22; *Griffin*, 2025 WL 978607, at *14. Mississippi could give "parents the information needed to engage in active supervision" over internet access. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 826 (2000). And these tools are better suited to provide parents with meaningful, ongoing oversight over the minor children's online activities, relative to the Act's requirement for one-time parental consent. And "[i]t is no response that [these tools] require[] a consumer to take action, or may be inconvenient, or may not go perfectly every time." *Id.* at 824. What is more, members' self-regulation is extensive, as covered websites already engage in content moderation and provide parental controls and other tools. *See supra* p.7. This Court has recognized that "voluntary" self-regulatory efforts are preferable to government intervention. *Brown*, 564 U.S. at 803 (video game industry's self-regulation).

The Act's parental-consent requirements have yet more tailoring flaws. They are not "narrowly tailored" for purposes of intermediate scrutiny—let alone the least restrictive means for strict scrutiny. *Packingham*, 582 U.S. at 105-06 (citation omitted). Respondent has not proffered *any* evidence justifying impeding minors' access to billions of pieces of fully protected speech across the nine member websites here—to say nothing of the many more websites the Act regulates. At bottom, the Act would require minors to secure parental consent to watch documentaries on YouTube, post their artwork on Instagram, submit their fan fiction to Dreamwidth, or debate politics on Facebook—in addition to myriad other fully protected speech activities. And the burden on protected speech here is not "incidental"; the restriction on minors' access to speech is the entire point of the law. *FSC*, 2025 WL 1773625, at *11. Accordingly, the Act "burden[s] substantially more speech than is necessary to further" any

governmental interest. *Packingham*, 582 U.S. at 106 (citation omitted).

The State certainly has not provided "a direct causal link between" access to all of the regulated websites and harms to minors. *Brown*, 564 U.S. at 799. The Act's blunderbuss approach to regulating online speech is an insurmountable tailoring flaw. Even if covered websites were genuinely "dangerous," it is unclear why the State would allow minors to access them "so long as one parent . . . says it's OK." *Id.* at 802.

In addition, the Act fails to "take into account juveniles' differing ages and levels of maturity." *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 396 (1988). The Act unlawfully requires parental consent for all minors at every developmental stage—from websites' youngest users to 17-year-olds. *Id.*

B. The Act's age-verification requirement for adults and minors to access fully protected speech violates the First Amendment.

1. The Act also violates the First Amendment by requiring all users—adults and minors—to "verify" their "age[s]" to "creat[e] an account" on covered websites. § 4(1). In other words, the Act burdens threshold access to "what for many are the principal sources for knowing current events, . . . and otherwise exploring the vast realms of human thought and knowledge." *Packingham*, 582 U.S. at 107. This is akin to stationing government-mandated clerks at every bookstore and theater to check identification before citizens can access books, movies, or even join conversations.

FSC squarely held that "submitting to age verification is a burden on the exercise of" the "right to access speech" protected by the First Amendment. 2025 WL 1773625, at *11. Government-mandated "age verification necessarily" "burden[s]" that right. *Id.* at *16. This Court has held that the government requiring an "affirmative

obligation . . . as a limitation on the unfettered exercise of . . . First Amendment rights" is unconstitutional. *Lamont v. Postmaster Gen. of U.S.*, 381 U.S. 301, 305, 307 (1965). Nowhere can that be more true than in the context of the Act here, which requires age verification to access "the most powerful mechanisms available to a private citizen to make his or her voice heard." *Packingham*, 582 U.S. at 107. Indeed, the undisputed record evidence demonstrates that just requiring users to self-report their birthdates deters users from accessing the websites. *E.g.*, App.198a-200a. That is why multiple courts have enjoined enforcement of age-verification requirements to access social media. *E.g.*, *Carr*, 2025 WL 1768621, at *13-14; *Griffin*, 2025 WL 978607, at *8-10; *Reyes*, 748 F. Supp. 3d at 1129 & n.169.

Contrary to Respondent's arguments below, the Act's requirement for "commercially reasonable" age verification, § 4(1), does not alter the constitutional analysis. App.276a-77a. As an initial matter, commercially reasonable age "verification" will require something more than simply asking for self-declared age—because the Act separately requires "register[ing]" users' ages. *See supra* p.9.

Whatever form verification takes, a state law burdening users' access to protected speech does not become constitutional just because it might be "commercially reasonable" for the publisher to comply with the government's speech restrictions. *Supra* p.20. *FSC* confirms that courts can rule on the constitutionality of state laws requiring "commercially reasonable method[s]" without an exhaustive inventory of what is "commercially reasonable" for every website. 2025 WL 1773625, at *3 (quoting Tex. Civ. Prac. & Rem. Code § 129B.003(b)). *FSC* considered the merits of the First Amendment facial challenge there, even though there was a similar

"commercially reasonable" qualifier for age verification. *Id.* Just as with the parental-consent requirement, *any* age-verification requirement would unconstitutionally restrict users' access to—and websites' right to disseminate—fully protected speech.

Nor does *FSC* permit Mississippi to require age-verification to access fully protected speech for adults and minors. *FSC* involved "pornography," a unique category of speech that is simultaneously protected for adults but unprotected for minors. *Id.* at *11. So age verification to access websites that disseminate large amounts of pornography would be consistent with age verification at physical bookstores to access such content, if made available. *Id.* In contrast, the Act here "direct[ly] target[s]" a staggering amount of "*fully protected speech*"—for minors and adults alike. *Id.* at *12 (emphasis added). And it lacks a "brick-and mortar" analogue, as government-imposed age verification is not necessary (or permissible) to enter bookstores, theaters, or arcades. *See supra* p.17. This Act thus presents far different issues from pornography laws, as *FSC* recognized would be the case. 2025 WL 1773625, at *10.

Contrary to Respondent's claims below (App.279a), *FSC* did not hold that "there is 'no First Amendment right to avoid' age verification or parental consent" for fully protected speech. Again, *FSC*'s holding was cabined: It held that adults could lack the First Amendment right to avoid age verification to access speech "obscene to minors" (in contrast to fully protected speech for adults *and* minors), because this unique speech category "is unprotected to the extent the State seeks only to verify age." 2025 WL 1773625, at *11. And even then, age-verification laws in that unique context still triggered intermediate scrutiny because they "burden" adults' rights. *Id.*

2. Because the Act's age-verification requirement "target[s] . . . fully protected

speech," it triggers "[s]trict scrutiny." *Id.* at *12. But the age-verification requirement would fail any form of heightened First Amendment scrutiny. Like the parental-consent requirements, the age-verification requirements are not the least restrictive means of achieving the State's purported interest, or even a narrowly tailored means of doing so. *See supra* pp.21-24.

Age verification is only a means to effectuate the Act's other unlawful age-based restrictions, like the parental-consent requirements and the monitoring-and-censorship requirements. Because those other provisions are unlawful, age-verification serves no valid governmental interest.

Regardless, the Act is overbroad because it would require adults and minors to provide personally identifying information to access all manner of fully protected speech. As a result, it "burden[s] substantially more speech than is necessary to further" any governmental interest. *Packingham*, 582 U.S. at 106 (citation omitted). As discussed above at p.23, nothing in the record justifies impeding threshold access to countless pieces of fully protected speech on the nine member websites at issue.

The Act also would "all but kill anonymous speech online," by "requir[ing] . . . website visitors [to] forgo the anonymity otherwise available on the internet" which "would undoubtedly chill speech—and, likely, would disproportionately chill speech on the most controversial issues." *Carr*, 2025 WL 1768621, at *15 (citation omitted). That burdens the First Amendment right of speakers to "remain anonymous." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 342 (1995). And it would deter adults from accessing the websites, as undisputed record evidence shows. App.198a-200a.

C. The Act's monitoring-and-censorship requirements are unconstitutional.

The Act's requirement that websites "implement a strategy to prevent or mitigate . . . exposure to" vaguely defined categories of protected speech violates the First Amendment and the Due Process Clause. § 6(1). It imposes a prior restraint on disseminating protected speech. It further violates websites' right to "control the content that will appear to users." *Moody*, 603 U.S. at 736. And it unconstitutionally "deputizes private actors into censoring speech." *Bonta*, 113 F.4th at 1121.

1. The Act's § 6 imposes a prior restraint: It prohibits websites from publishing speech "in the future" unless they meet state-imposed requirements. *Alexander v. United States*, 509 U.S. 544, 553 (1993). Prior restraints are the "least tolerable infringement on First Amendment rights." *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 558-59 (1976). And requiring websites to monitor all content they disseminate to satisfy the State's standards will unconstitutionally chill speech. *Smith v. California*, 361 U.S. 147, 152-54 (1959).

Here, § 6 requires covered websites to "prevent . . . minor[s'] exposure" to protected speech before any judicial determination that the speech may lawfully be suppressed. *See Alexander*, 509 U.S. at 551. Even prior restraints of *unprotected* speech must meet "the most exacting scrutiny." *Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 101-02 (1979) (collecting cases).

Below, Respondent insisted that § 6 does not "require[] platforms to block or alter content," requiring that they only "adopt" a "strategy." App.280a. Yet the Act's express language requires websites to "implement" that strategy, forcing websites to

censor ("prevent . . . exposure to") protected speech accessible to minors. § 6(1). The Western District of Texas preliminarily enjoined enforcement of a nearly identical requirement. *CCIA v. Paxton*, 747 F. Supp. 3d at 1036-38, 1040-42. And the Texas Attorney General acknowledged that Texas's substantially similar law requires "filtering" content. *See* Appellant Br. 2, 5-6, 10, 36, 48, *Comput. & Commc'ns Indus. Ass'n v. Paxton*, 5th Cir. Case Nos. 24-50721, 25-50096 (Apr. 28, 2025). If websites need only "adopt" (but not "implement") a strategy, this provision cannot possibly advance any governmental interest. In any event, while Respondent admits that NetChoice members have voluntarily implemented "strateg[ies]" to protect minors online, App.281a-82a, Respondent has never said *any* existing strategies comply with the Act.

Respondent also argued below that websites can comply with this provision by simply posting resources for minor users, addressing § 6's content categories. App.280a. It is unclear why the Act would seemingly permit the purported harms to happen and then require only mitigation through the form of government-compelled speech. Nor is it clear how § 6(1) could *require* websites to provide mitigation resources when the Act expressly explains in § 6(2) that the Act should not be "construed" to "prevent or preclude" the websites "from providing resources for the prevention or mitigation of" harms. Regardless, if the Act compels speech about content-based categories, that imposes a First Amendment problem too. *See Nat'l Inst. of Fam. & Life Advocates v. Becerra*, 585 U.S. 755, 766 (2018). The First Amendment prohibits the government from compelling private actors to serve as a mouthpiece for the State. This Court has called this principle the one "fixed star in our constitutional

constellation." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

Assuming the Act did not demand monitoring and filtering, it imposes the kind of "informal" governmental "coercion" that this Court has rejected. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963). A "government official cannot do indirectly what she is barred from doing directly." *Vullo*, 602 U.S. at 190. Delegating censorship authority to private parties exacerbates the constitutional harm. Private entities lack the constitutional constraints that bind government actors, creating an "unacceptable risk of the suppression of ideas." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 764 n.9 (1988) (citation omitted).

2. Even if § 6 were not a prior restraint, it still violates the First Amendment by restricting "a substantial amount of constitutionally protected speech," rendering it "facially invalid." *City of Houston v. Hill*, 482 U.S. 451, 466-67 (1987). Statutory "[t]erms like 'promoting,' . . . 'substance abuse,' 'harassment,' and 'grooming' are undefined, despite their potential wide breadth and politically charged nature." *CCIA v. Paxton*, 747 F. Supp. 3d at 1036. The State may not enact "statute[s] patently capable of many unconstitutional applications, threatening those who validly exercise their rights of free expression." *Smith*, 361 U.S. at 151. Nor may it "create a wholly new category of content-based regulation that is permissible only for speech directed at children." *Brown*, 564 U.S. at 794.

Explained below and collected in Plaintiff's Amended Complaint (App.135a-36a) are examples of protected speech that the Act could reach.

A host of works of literature and philosophy could "promote[] or facilitate[] . . . [s]elf-harm, eating disorders, substance use disorders, and suicidal behaviors."

§ 6(1)(a). Examples include Sylvia Plath's *The Bell Jar* (1963), the biblical story of Samson (*Judges* 16), and the television series *13 Reasons Why* (2017-2020). The Act also captures discussions about assisted suicide for those with terminal illnesses in online support groups. *Cf.* Peter Singer, *Practical Ethics* (3d ed. 2011).

Popular culture is replete with protected speech that could "promote[] or facilitate[] . . . substance abuse or use of illegal drugs." § 6(1)(b). Examples include The Weeknd's Kids'-Choice-Award-nominated *Can't Feel My Face* (2015) and The Beatles' *Lucy in the Sky with Diamonds* (1967). The Act also reaches support-group discussions about using drugs to address illnesses.

Similarly, many protected works of art could "promote[] or facilitate[] . . . [s]talking, physical violence, online bullying, or harassment." § 6(1)(c). Examples include The Police's *Every Breath You Take* (1983) and entire categories at large bookstores (*e.g.*, Stalking – Fiction, Barnes & Noble, https://perma.cc/VX92-257V).

NetChoice members work tirelessly to detect and block content that could "promote[] or facilitate[] . . . [g]rooming, trafficking, child pornography, or other sexual exploitation or abuse." § 6(1)(d); *see* App.177a; App.242a-43a. Yet even "teenage sexual activity and the sexual abuse of children" has "inspired countless literary works" such as "Romeo and Juliet" and the movie "American Beauty." *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 247-48 (2002).

Many works of art, literature, political expression, and pop culture could "promote[] or facilitate[] . . . [i]ncitement of violence." § 6(1)(e). Concerns about minors' exposure to violent video games led to this Court's decision in *Brown*. 564 U.S. at 794. Short of actual incitement to "imminent lawless action [that] is likely to incite or

produce such action," such speech is fully protected by the First Amendment. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969); *see Nwanguma v. Trump*, 903 F.3d 604, 610 (6th Cir. 2018) ("[m]ere tendency of speech to encourage" or promote "unlawful acts" isn't "sufficient reason for banning it" (cleaned up)).

Countless forms of protected speech could "promote[] or facilitate[] . . . [a]ny other illegal activity." § 6(1)(f); *see* App.135a-36a. For instance literature discussing civil disobedience as a form of democratic protest could promote illegal activity. And what is "illegal" can vary town to town, state to state, and country to country.

The "harmful material" (§ 2(c)) category does not distinguish speech that is obscene to children versus teenagers. *Am. Booksellers*, 484 U.S. at 389. Furthermore, because the Act requires websites to continually monitor for individual pieces of such content, private entities "will tend to restrict the" content they disseminate "to those [they have] inspected; and thus the State will have imposed a restriction upon the distribution of constitutionally protected as well as obscene literature." *Smith*, 361 U.S. at 153.

The Act's *exceptions* to § 6's requirements do not cure the Act's deficiencies, and they only raise more questions. They permit: (1) minors to "deliberately and independently search[] for, or specifically request[]" speech; and (2) websites to "provid[e] resources for the prevention or mitigation of the harms" described above. § 6(2). It is unclear how websites must verify and prove that a minor deliberately sought out such content, or whether content qualifies for these exceptions.

Consequently, covered websites will need to align their content moderation with the State's requirements—what this Court made clear the First Amendment does not

allow. *Moody*, 603 U.S. at 732-33. Even given their extensive content moderation, members cannot be sure that any of their current policies will satisfy how Respondent interprets the Act. App.187a-88a; App.216a-21a. So Respondent can second-guess any content-moderation decision. But content moderation is often nuanced and context-dependent. App.178a-79a; App.220a. Given the sheer volume of speech on these services, covered websites will be required to guess at Respondent's subjective determinations for potentially *billions* of individual pieces of speech. *E.g.*, App.179a.

3. Section 6 triggers and fails strict scrutiny. It directs websites to block content-based categories of speech "based on its communicative content." *Reed*, 576 U.S. at 163-64. These categories are content-based even if the State purports to regulate only the *effects* of speech. *Boos v. Barry*, 485 U.S. 312, 321 (1988). These categories are also viewpoint-based, regulating speech that "promotes" social ills. § 6(1).[6] A law is directly "aimed at a particular viewpoint" if it forbids "promot[ing]" that viewpoint. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565 (2011). For example, the Act's restriction on content that "promotes . . . illegal drugs" targets the (highly objectionable but protected) viewpoint that illegal drugs are good.

Section 6 fails strict scrutiny. Its requirements are overinclusive and not the least restrictive means of regulating speech, as they are "superimposed upon the State's

[6] Several Circuits have held that statutes using similar language, including "promote," violate the First Amendment by restricting protected speech. *E.g.*, *United States v. Miselis*, 972 F.3d 518, 536 (4th Cir. 2020) ("promote" is "overinclusive" as "between advocacy and action"); *Gay Lesbian Bisexual All. v. Pryor*, 110 F.3d 1543, 1550 (11th Cir. 1997) (law prohibiting "foster[ing]," "promot[ing]," and "encourag[ing]" "was overbroad"); *Nat'l Gay Task Force v. Bd. of Educ. of City of Okla. City*, 729 F.2d 1270, 1274 (10th Cir. 1984) (similar).

criminal regulation[s]." *Bantam Books*, 372 U.S. at 69. Those existing criminal laws make the Act "largely unnecessary," *id.*, and an improper "prophylaxis-upon-prophylaxis," *Cruz*, 596 U.S. at 306 (citation omitted). Mississippi law already addresses the unlawful conduct appearing in the prohibited categories. App.155a-56a. Governments cannot "suppress[]" the speech of a "law-abiding" person or website "to deter conduct by a non-law-abiding third party." *Bartnicki v. Vopper*, 532 U.S. 514, 529-30 (2001).

In addition, NetChoice members' nine covered websites already engage in their own "voluntary" content moderation to address the content that concerns the State—which is a less-restrictive alternative. *Brown*, 564 U.S. at 803; *see supra* p.7.

Furthermore, because many covered websites may not be able to "age-gate" content such that minors and adults are presented with different content, *see* App.255a, the law's effects cannot be limited to minors. Such websites can comply only by preventing prohibited content from reaching *anyone*. App.255a. So the Act could unconstitutionally "reduce the adult population . . . to reading only what is fit for children." *Butler v. Michigan*, 352 U.S. 380, 383 (1957).

These requirements are also underinclusive. There are myriad unregulated websites on the internet—let alone television, books, and other media—where minors can encounter content prohibited by the Act. And the exception allowing a minor to "deliberately and independently" seek out the otherwise regulated speech on covered websites undermines the Act entirely. § 6(2)(a). If this speech is dangerous, the Act's allowance for minors to expressly request such speech means this law plainly does not further the State's goals. *Brown*, 564 U.S. at 802. A "law cannot be regarded as

protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited." *Reed*, 576 U.S. at 172 (citation omitted).

4. Section 6 is also unconstitutional because its requirements are too vague to provide covered websites "sufficient definiteness" to ensure "that ordinary people can understand" what will give rise to liability. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Rather, they risk "arbitrary or discriminatory" enforcement. *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). For example, a key consideration under the Act is whether content "promotes" certain social ills. § 6(1). This Court invalidated, "because of vagueness," a law hinging on the word "promote." *Baggett v. Bullitt*, 377 U.S. 360, 371 (1964). As the Court explained, the "range of activities which are or might be deemed" to "promote" an idea "is very wide indeed" and provides no "ascertainable standard of conduct." *Id.* at 371-72; *see CCIA v. Paxton*, 747 F. Supp. 3d at 1040. The Act's parallel usage of "facilitates" is no better. § 6(1).

These problems are exacerbated by the nature of websites' content-moderation policies and decisions, where context, and other factors are relevant to whether content "promotes or facilitates" something. App.248a-50a; App.178a-79a. And these websites publish various forms of media in many languages and reflecting cultures worldwide. So all too often, whether content falls into one of the Act's prohibited categories will be a matter of perception—and "completely subjective." *Grayned v. City of Rockford*, 408 U.S. 104, 113 (1972). These vague prohibitions "effectively grant[] [the State] the discretion to [assign liability] selectively on the basis of the content of the speech." *Hill*, 482 U.S. at 465 n.15.

D. The Act's content-based coverage definition renders all of the Act's speech restrictions unconstitutional.

1. The Act's challenged speech restrictions also trigger strict scrutiny because the Act's central coverage provisions (§ 2(a)-(b)) are content-based. This content-based "digital service" definition subjects all of the Act's speech regulations to strict scrutiny because "content-based burdens must satisfy the same rigorous scrutiny as its content-based bans." *Sorrell*, 564 U.S. at 566 (citing *Playboy*, 529 U.S. at 812).

The Act's coverage provisions are content-based, rendering all of the Act's operative provisions content-based. The Act covers "digital service[s]" that "allow[] users to socially interact with other users." § 3(1). It thus excludes websites that allow users to interact "professionally" or those that do not allow interaction. The Act also expressly excludes websites that "[p]rimarily function[] to provide a user with access to [1] news, [2] sports, [3] commerce, [4] online video games," and "[5] career development opportunities." § 3(2)(c)-(d). These distinctions are based on "subject matter"—and thus "content." *Reed*, 576 U.S. at 163; *see Barr v. Am. Ass'n of Pol. Consultants*, 591 U.S. 610, 621 (2020) (controlling plurality op.) (exceptions to law can render law content-based). Multiple lower courts have concluded that similar exceptions render similar laws content based. *Carr*, 2025 WL 1768621, at *11-12; *Yost*, 2025 WL 1137485, at *18; *Griffin*, 2025 WL 978607, at *9; *Paxton*, 747 F. Supp. 3d at 1032.[7]

2. Even assuming for the sake of argument that Mississippi could establish a sufficient governmental interest, several tailoring flaws pervade the Act's coverage.

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[7] Because the Act's coverage definition is content-based, so too is each provision regulating speech depending on this definition: age verification, § 4(1); parental consent, § 4(2); information use and collection, § 5; and monitoring and censorship, § 6.

The Act is vastly overinclusive. It does not purport to identify particular websites that are harmful to minors or even particularly likely to be accessed by minors. *See* App.197a-98a; App.210a. And for the websites it regulates, the Act restricts users' access to *all* speech on those websites, including core protected speech.

Even under intermediate scrutiny, the Act "burden[s] substantially more speech than is necessary to further" any governmental interest. *Packingham*, 582 U.S. at 106 (citation omitted); *see FSC*, 2025 WL 1773625, at *5. It indiscriminately regulates all social media websites, without proof that *any* of them are harmful—let alone *all* of them. And it restricts access to *all* of the protected expression on those websites. *See supra* p.23. That makes this case unlike *FSC*, where the Texas law singled out "pornography" websites for age-verification. 2025 WL 1773625, at *7. Whatever kinds of "valid regulation[s]" the State can impose on "the pornography industry," *id.* at *18, it cannot impose like restrictions on peoples' access to fully protected speech.

The Act is also "seriously underinclusive." *Brown*, 564 U.S. at 805. The Act's coverage definition and its exclusions create gaps that undermine the necessary "coherent policy." *Sorrell*, 564 U.S. at 573 (citation omitted). If the State is attempting to regulate particular online interactions, that will be ineffective. For example, the Act restricts minor users from using covered websites to engage in conversations about sports but does not do so for *the same conversation* that takes place on websites "primarily" dedicated to "[1] news, [2] sports, [3] commerce, [4] online video games," and "[5] career development opportunities." § 3(2)(c)-(d). If anything, the nine websites at issue here are among the websites most likely to engage in content moderation and provide parents tools to oversee their minor children online.

IV. NetChoice's covered members' websites and their users will suffer substantial irreparable harms absent a vacatur.

The Act will cause NetChoice, its members, and internet users irreparable harm.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (citation omitted). NetChoice's covered members suffer irreparable harm when they are forced to comply with the Act, imposing burdens on their ability to disseminate and facilitate users' speech. App.211a-13a, 224a-25a, 227a. Members' burdens are matched by the harms their users face. Minors suffer harm when the Act prevents them from accessing fully protected speech through both age verification and parental consent. App.188a. And all users suffer harm when they must comply with age verification to access fully protected speech. App.199a-200a. When users can access those services, their ability to view and engage in certain speech will be limited. The Act's large penalties for noncompliance magnify these harms: $10,000 per violation and the specter of criminal liability. *See supra* p.11.

The Act also requires covered websites to shoulder steep and "nonrecoverable" compliance costs. *Ohio*, 603 U.S. at 292 (citation omitted). Compliance with the Act would require large-scale changes to some of the internet's biggest websites—not to mention many more similar, but smaller, communities. Each covered website will need to adopt age-verification, parental-consent, and monitoring systems to comply with the Act—at great expense. App.184a; App.202a.

For some websites, these compliance costs are "far in excess of [the] available budget" and "threaten[] [their] ability to continue operating." App.226a-27a. In addition to the large upfront costs of developing these new systems, covered websites must

maintain those systems. That will be onerous as well. For example, "[d]isputes about the identity of an account holder, their age, or the legal relationship between them and the person claiming to be their parent are complex, time-consuming, costly . . . , and unfortunately common." App.226a-27a.

V. The equities favor vacatur.

Whenever litigants seek injunctive relief, "often the harms and equities [will be] very weighty on both sides." *Ohio*, 603 U.S. at 291 (citation omitted). Accordingly, resolving NetChoice's request "ultimately turns on the merits." *Id.* at 292. But here, the remaining equitable factors substantially weigh in NetChoice's favor.

Unless this Court vacates the Fifth Circuit's stay, NetChoice members and their users will suffer immediate First Amendment harms. Users of NetChoice members will need to jump over the state-mandated hurdles to continue engaging in protected expression. What is more, members themselves will be compelled to adopt and implement the capabilities to enforce the State's restrictions, as the undisputed record evidence shows. App.211a; *see* App.183a-84a. So vacating the Fifth Circuit's stay would "preserv[e] the status quo" ante that persisted before Mississippi's unconstitutional speech restrictions. *San Diegans for Mt. Soledad Nat'l War Mem'l v. Paulson*, 548 U.S. 1301, 1304 (2006) (Kennedy, J., in chambers).

On the other side of the ledger, Mississippi lacks an interest in enforcing an unconstitutional law. Although the State has an interest in protecting minors, the government cannot pursue even laudable ends by unlawful means. *NFIB v. OSHA*, 595 U.S. 109, 120 (2022) (per curiam).

Furthermore, the State's interest is amply served by NetChoice members'

existing content moderation efforts and the availability of other means available to parents to oversee their children online—including those offered by NetChoice members. Accordingly, the district court's injunction does not eliminate all "efforts to protect minors." App.284a. NetChoice's members will continue moderating content according to their existing policies. *See supra* p.7. Parents can use the tools available to them, which the State can promote. *Supra* pp.6-7 And law enforcement can continue investigating and enforcing existing criminal laws. *See supra* pp.33-34; *e.g.*, *Ashcroft v. ACLU*, 542 U.S. 656, 671 (2004) ("[I]f the injunction is upheld, the Government in the interim can enforce obscenity laws already on the books.").

CONCLUSION

The Fifth Circuit's stay order would transform how Mississippi residents access and experience fully protected online speech—and how social media websites curate, disseminate, and display this speech. This law would stifle the internet's promise of "relatively unlimited, low-cost capacity for communication of all kinds," by requiring users to jump through substantial barriers to accessing speech that this Court—not to mention numerous courts across the country—have held unconstitutional in a variety of contexts. *Packingham*, 582 U.S. at 104 (citation omitted). And this transformation would occur with no reasoned analysis, no consideration of this Court's precedents, and no regard for the nationwide consensus rejecting similar laws. Litigation should proceed under the status quo ante, when Mississippi residents could access fully protected online speech freely.

For the foregoing reasons, NetChoice respectfully requests an immediate vacatur of the Fifth Circuit's stay order.

Dated: July 21, 2025

Respectfully submitted.

/s/ Scott A. Keller
Scott A. Keller
Counsel of Record
Steven P. Lehotsky
Jeremy Evan Maltz
LEHOTSKY KELLER COHN LLP
200 Massachusetts Ave. NW, Suite 700
Washington, DC 20001
(512) 693-8350
scott@lkcfirm.com

Jared B. Magnuson
LEHOTSKY KELLER COHN LLP
3280 Peachtree Road NE
Atlanta, GA 30305

Counsel for Applicant NetChoice

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Appendix 1

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
July 17, 2025
Lyle W. Cayce
Clerk

No. 25-60348

NetChoice, L.L.C.,

Plaintiff—Appellee,

versus

Lynn Fitch, *in her official capacity as Attorney General of Mississippi*,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:24-CV-170

UNPUBLISHED ORDER

Before Southwick, Duncan, and Engelhardt, *Circuit Judges*.

Per Curiam:

IT IS ORDERED that Appellant's opposed motion for stay pending appeal is GRANTED.

Appendix 2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

NETCHOICE, LLC	§	**PLAINTIFF**
	§	
	§	
v.	§	**Civil No. 1:24-cv-170-HSO-BWR**
	§	
	§	
LYNN FITCH,	§	
in her official capacity as	§	
Attorney General of Mississippi	§	**DEFENDANT**

MEMORANDUM OPINION AND ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF NETCHOICE, LLC'S MOTION [49] FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiff NetChoice, LLC seeks to enjoin Sections 1 through 8 of Mississippi House Bill 1126 ("H.B. 1126" or the "Act"), which was signed into law on April 30, 2024, and originally set to take effect on July 1, 2024. *See* Mot. [49]. NetChoice asks this Court to preliminarily enjoin Defendant Lynn Fitch, in her official capacity as Mississippi Attorney General, from taking any action to enforce the challenged portions of H.B. 1126. *See id.*; Mem. [50]. The Attorney General opposes the Motion [49]. *See* Resp. [54].

After consideration of the record and relevant legal authority, including the Fifth Circuit's prior opinion in this case and the United States Supreme Court's decision in *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), and because the Court finds the Act unconstitutional as applied to certain of Plaintiff NetChoice, LLC's members, a preliminary injunction should issue pending final disposition of this

case on the merits. Mississippi Attorney General Lynn Fitch and her agents, employees, and all persons acting under her direction or control, will be preliminarily enjoined from enforcing Sections 1-8 of Mississippi House Bill 1126 against Plaintiff NetChoice, LLC's eight covered members: (1) Dreamwidth; (2) Meta, which owns and operates Facebook and Instagram; (3) Nextdoor; (4) Pinterest; (5) Reddit; (6) Snap Inc., which owns and operates Snapchat; (7) X; and (8) YouTube.

I. BACKGROUND

A. NetChoice

Plaintiff NetChoice, LLC ("NetChoice" or "Plaintiff") is a nonprofit trade association for internet companies. Am. Compl. [48] at 5. Its Amended Complaint [48] asserts that H.B. 1126 regulates some services offered by the following of its members: (1) Dreamwidth; (2) Meta, which owns and operates Facebook and Instagram; (3) Nextdoor; (4) Pinterest; (5) Reddit; (6) Snap Inc., which owns and operates Snapchat; (7) X; and (8) YouTube. *Id.* According to NetChoice's General Counsel and Director of Strategic Initiatives Bartlett Cleland ("Cleland"), its members' websites "publish, disseminate, display, compile, create, curate, and distribute a wide range of valuable and protected expression to their users," and "disseminate content (text, audio, graphics, and video) that facilitates their users' ability to practice their religious beliefs, engage in political discourse, seek cross-cultural dialogue, supplement their education, learn new skills, and simply interact socially." Ex. [49-1] at 3.

Cleland's Declaration states that the Act covers at least eight of NetChoice's members which are known as "social media" websites whose "interactive functionality is the point of the service." *Id.* at 23. Each allows its account holders to upload and publicly post content, which other account holders may then view and react to, comment on, or share with others. *Id.* at 22. According to Cleland, users of these social media websites "engage in protected speech activities, including speaking to others and viewing content created by others." *Id.* He opines that the Act's burdensome requirements "will make it more difficult for NetChoice members to provide their websites to minors and adults, and will burden minors and adults' access to highly valuable and protected speech." *Id.* at 24.

B. Mississippi H.B. 1126

Sections 1-8 of H.B. 1126 provide in relevant part as follows:

> SECTION 3. (1) This act applies only to a digital service provider who provides a digital service that:
> (a) Connects users in a manner that allows users to socially interact with other users on the digital service;
> (b) Allows a user to create a public, semi-public or private profile for purposes of signing into and using the digital service; and
> (c) Allows a user to create or post content that can be viewed by other users of the digital service, including sharing content on:
> (i) A message board;
> (ii) A chat room; or
> (iii) A landing page, video channel or main feed that presents to a user content created and posted by other users.

Ex. [1-1] at 3-4 (Miss. H.B. 1126, § 3(1)).

The Act does not apply to a digital service provider that "processes or maintains user data in connection with the employment, promotion, reassignment or retention of the user as an employee or independent contractor, to the extent that

the user's data is processed or maintained for that purpose." *Id.* at 4 (Miss. H.B. 1126, § 3(2)(a)). Nor does the Act apply to a provider's service that "facilitates e-mail or direct messaging services, if the digital service facilitates only those services," primarily functions to provide a user with access to certain career development opportunities, or primarily functions "to provide a user with access to news, sports, commerce, online video games or content primarily generated or selected by the digital service provider" and "[a]llows chat, comment or other interactive functionality that is incidental to the digital service." *Id.* at 4-5 (Miss. H.B. 1126, § 3(2)(b)-(c)).

Under Section 4,

> (1) A digital service provider may not enter into an agreement with a person to create an account with a digital service unless the person has registered the person's age with the digital service provider. A digital service provider shall make commercially reasonable efforts to verify the age of the person creating an account . . . .
> (2) A digital service provider shall not permit an account holder who is a known minor to be an account holder unless the known minor has the express consent from a parent or guardian . . . .

Id. at 5-7 (Miss. H.B. 1126, § 4).

Section 6 states that for a "known minor's use of a digital service, a digital service provider shall make commercially reasonable efforts to develop and implement a strategy to prevent or mitigate the known minor's exposure to harmful material and other content that promotes or facilitates" certain specified harms. *Id.* at 8 (Miss. H.B. 1126, § 6(1)). These harms are identified in subsection (1) and include self-harm, eating disorders, substance use disorders, suicidal behaviors, stalking, grooming, incitement of violence, and any other illegal activities. *Id.*

But

> [n]othing in subsection (1) shall be construed to require a digital service provider to prevent or preclude:
> (a) Any minor from deliberately and independently searching for, or specifically requesting, content . . . .

Id. at 8-9 (Miss. H.B. 1126, § 6(2)(a)).

In sum, Section 4(1) of H.B. 1126 requires all users, adults and minors alike, to verify their age before they may open an account with a covered digital service provider (the "age-verification requirement"), while Section 4(2) requires consent from a parent before a known minor may create an account (the "parental-consent requirement"). *Id.* Section 5 imposes a limitation on the collection of data by covered digital service providers that enter into an agreement with a known minor for access to a digital service (the "data-collection limitation"), and Section 6 requires those digital service providers to make commercially reasonable efforts to develop and implement a strategy to prevent or mitigate the known minor's exposure to harmful material and other content that promotes or facilitates certain harms to minors (the "prevention-or-mitigation requirement").[1] *See id.* But Section 6(2) does not require digital service providers to prevent or preclude minors with accounts from "deliberately and independently searching for, or specifically requesting, content." *Id.*

Section 7 of the Act sets forth civil remedies permitting a parent or guardian of a known minor affected by a violation of the Act to bring a cause of action for a

[1] Plaintiff refers to this as a monitoring-and-censorship requirement, *see* Am. Compl. [48] at 19, while Defendant refers to it as the strategy provision, *see* Resp. [54] at 19-20.

declaratory judgment or an injunction, and Section 8 classifies violations of the Act as unfair methods of competition and unfair or deceptive trade practices or acts under Mississippi Code § 75-24-5, for which an action for injunctive relief may be brought by the Mississippi Attorney General. *See id.* at 9-12; Miss. Code Ann. §§ 75-24-5, 75-24-9. Finally, a knowing and willful violation of Section 75-24-5, including a violation of H.B. 1126, can subject a person to criminal penalties. *See* Miss. Code Ann. § 75-24-20.

C. Procedural History

NetChoice initiated this lawsuit on June 7, 2024, by filing a Complaint [1] for Declaratory and Injunctive Relief, which raised First Amendment facial challenges to the Act's central coverage definition (Count I), age-verification requirement (Count III), parental-consent requirement (Count IV), and prevention-or-mitigation requirement (Count V). Alternatively, the Complaint alleged that the Act is overbroad, *see* Compl. [1] at 18-22, 25-33 (Counts I, III, IV, V), and that its central coverage definition of a digital service provider is unconstitutionally vague and violates principles of free speech and due process, *id.* at 23-24, 33-34 (Count II, VI). The Complaint [1] further claimed that 47 U.S.C. § 230 preempts the monitoring-and-censorship requirements in Section 6. Compl. [1] at 35-36 (Count VII).

NetChoice sought a preliminary injunction, *see* Mot. [3], which the Court granted after a hearing on grounds that NetChoice had shown a substantial likelihood of success on the merits of its claim that the Act was facially unconstitutional under the First Amendment, *see* Order [30]. The Court

preliminarily enjoined Defendant from enforcing H.B. 1126 against NetChoice and its members, pending final disposition of the case. *Id.* at 39-40.

On appeal, the Fifth Circuit determined that NetChoice had satisfied constitutional and prudential standing requirements. *See* Op. [51] at 4-9; *NetChoice, L.L.C. v. Fitch*, 134 F.4th 799, 804-807 (5th Cir. 2025). On the merits, it noted that this Court had not been able to apply the framework recently announced by the Supreme Court in *Moody* to NetChoice's First Amendment facial challenge because of the timing of that opinion. *See Fitch*, 134 F.4th at 807-09. Accordingly, the Court of Appeals vacated the injunction and remanded for this Court to determine "to whom the Act applies [and] the activities it regulates, and then weigh violative applications of the Act against non-violative applications," as required by *Moody* and a recent Fifth Circuit decision, *NetChoice, L.L.C. v. Paxton*, 121 F.4th 494 (5th Cir. 2024). *Fitch*, 134 F.4th at 809.

D. Plaintiff's Amended Complaint [48]

On remand, NetChoice opted to file an Amended Complaint [48], which reurges its First Amendment facial challenge to Sections 1 through 8 of the Act and adds a challenge to these provisions as applied to its regulated members and their services. *See* Am. Compl. [48] at 5, 23-30, 32-42 (challenging all speech regulations relying on central coverage definition (Count I), the age-verification requirement (Count III), the parental-consent requirement (Count IV), and the prevention-or-mitigation requirement (Count V)). Alternatively, the Amended Complaint [48] asserts that the Act's central coverage definition of a digital service provider and its

prevention-or-mitigation requirement are unconstitutionally vague and violate principles of free speech and due process. *See id.* at 30-32, 42-43 (Counts II and VI). The Amended Complaint [48] further alleges that 47 U.S.C. § 230 preempts the monitoring-and-censorship requirements in Section 6. *See* Am. Compl. [48] at 43-45 (Count VII). Plaintiff seeks to enjoin Defendant from enforcing the Act, *see id.* at 45 (Count VIII), and a declaration that each of its challenged provisions is unconstitutional, *see id.* at 45-46 (Count IX).

E. Plaintiff's Motion [49] for Temporary Restraining Order and Preliminary Injunction

NetChoice's renewed Motion [49] for Temporary Restraining Order and Preliminary Injunction contends that "[u]nder either (1) the *Moody*-informed facial challenge analysis or (2) the added as-applied claims, NetChoice is entitled to immediate relief," Mot. [49] at 1, and that nothing has changed since the Court's earlier ruling to undermine its previous merits conclusions, *id.* at 2. NetChoice supports its Motion [49] with the newly submitted Cleland Declaration [49-1] and previously-submitted Declarations from Alexandra Veitch [3-3], Gautham Pai, [3-4], and Denise Paolucci, [3-5]. *Id.* at 3.

The Attorney General responds that NetChoice has not made the required showing to obtain injunctive relief as to any claim. Resp. [54] at 14. First, she insists that NetChoice is likely to lose on the merits of its facial and as-applied First Amendment claims, as well as on its vagueness and preemption claims. *See id.* at 14-33. And the Attorney General contends that the remaining factors strongly disfavor injunctive relief. *See id.* at 34-35.

NetChoice replies that the Attorney General misconstrues what the facial-challenge analysis requires, and that her suggested analysis would make facial challenges virtually impossible. *See* Reply [56] at 3-5. It contends that the Court can determine to whom the Act applies and which activities it regulates based on the face of the law and the facts in the record, and it attempts to distinguish the text of the Act from the laws at issue in *Moody* and prior Fifth Circuit caselaw. *Id.* at 5-6. NetChoice maintains that the challenged provisions discriminate based on content, triggering strict scrutiny, and that the Act has a substantial number of applications that abridge free speech when judged in relation to any hypothetical constitutional applications. *Id.* at 7. NetChoice also argues that the Act's speech regulations are unconstitutional as applied to its covered members, that its central coverage definition is unconstitutionally vague, and that Section 6 is preempted by 47 U.S.C. § 230. *See id.* at 9-10. Finally, NetChoice states that the other relevant factors under Federal Rule of Civil Procedure 65(a) also favor injunctive relief. *Id.* at 10.[2]

II. DISCUSSION

This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343. A preliminary injunction under Rule 65(a) requires the moving party to establish four factors:

> (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that

[2] The Court conferred with the parties, and all concurred that another hearing was unnecessary. *See* Min. Entry, May 13, 2025.

> will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

Mock v. Garland, 75 F.4th 563, 577 (5th Cir. 2023) (quotation omitted). When the government is the opposing party, the last two factors merge. *Id.* (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

The movant bears the burden of persuasion on all requirements. *Id.* at 587. The Supreme Court has noted that "a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (quotation omitted).

A. NetChoice's Standing

The first question is whether NetChoice has standing to maintain its current claims. As this Court originally determined, and the Fifth Circuit confirmed, NetChoice satisfied the requirements of associational and prudential standing to pursue the claims in its original Complaint [1]. *See Fitch*, 134 F.4th at 804-07. The Court finds that the filing of the Amended Complaint [48] has not changed this result. *See id.*

As for the new, as-applied First Amendment claims, *see* Am. Compl. [48], "there must be some evidence that a rule would be applied to the plaintiff in order for that plaintiff to bring an as-applied challenge," *Speech First, Inc. v. Fenves*, 979 F.3d 319, 335 (5th Cir. 2020), *as revised* (Oct. 30, 2020) (quotation and alterations omitted). NetChoice meets this requirement by presenting evidence that the Act covers at least eight of its members: (1) Dreamwidth; (2) Meta, which owns and

operates Facebook and Instagram; (3) Nextdoor; (4) Pinterest; (5) Reddit; (6) Snap Inc., which owns and operates Snapchat; (7) X; and (8) YouTube. Decl. [49-1] at 22. NetChoice has also submitted member declarations from YouTube (which is owned and operated by Google Inc.), Nextdoor, and Dreamwidth discussing how the Act applies to their respective services. *See* Ex. [3-3]; Ex. [3-4]; Ex. [3-5].

NetChoice has therefore presented some evidence that the Act would apply to its members; this is sufficient to support its standing to pursue an as-applied challenge. *See Speech First, Inc.*, 979 F.3d at 335.

B. Relevant First Amendment Principles

"[T]he First Amendment provides in relevant part that 'Congress shall make no law . . . abridging the freedom of speech,'" and "the Fourteenth Amendment makes the First Amendment's Free Speech Clause applicable against the States." *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 808 (2019). The First Amendment protects both freedom of speech as well as the "right to receive information and ideas, regardless of their social worth." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). "[T]he right to receive ideas follows ineluctably from the *sender's* First Amendment right to send them" and "is a necessary predicate to the *recipient's* meaningful exercise of his own rights of speech, press, and political freedom." *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982) (plurality opinion) (emphasis in original).[3] "As a general matter,

[3] H.B. 1126's primary focus is minors. But "minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them." *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212-13 (1975) (citation omitted). "No doubt

the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *United States v. Stevens*, 559 U.S. 460, 468 (2010) (quotation and alteration omitted).

"The distinction between a facial and as applied challenge goes to the breadth of the remedy employed by the Court." *Turtle Island Foods, S.P.C. v. Strain*, 65 F.4th 211, 218-19 (5th Cir. 2023) (quotation and alterations omitted). Because a facial challenge is "really just a claim that the law or policy at issue is unconstitutional in all its applications," the Supreme Court has stated that "classifying a lawsuit as facial or as-applied affects the extent to which the invalidity of the challenged law must be demonstrated and the corresponding breadth of the remedy." *Bucklew v. Precythe*, 587 U.S. 119, 138 (2019) (quotation omitted). But "it does not speak at all to the substantive rule of law necessary to establish a constitutional violation." *Id.* "When a litigant brings both as-applied and facial challenges, [courts] generally decide the as-applied challenge first because it is the narrower consideration." *Buchanan v. Alexander*, 919 F.3d 847, 852 (5th Cir. 2019). "Although as-applied challenges are generally favored as a matter of judicial restraint because they result in a narrow remedy, a developed factual record is essential." *Justice v. Hosemann*, 771 F.3d 285, 292 (5th Cir.

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a State possesses legitimate power to protect children from harm, but that does not include a free-floating power to restrict the ideas to which children may be exposed." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 794 (2011) (citations omitted). "Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them." *Id.* at 795 (quoting *Erznoznik*, 422 U.S. at 213-14).

2014). "Particularized facts are what allow a court to issue a narrowly tailored and circumscribed remedy." *Id.*

Accordingly, the Court turns first to NetChoice's challenge to Sections 1 through 8 of the Act, as applied to its eight covered members and their services. *See* Am. Compl. [48] at 5, 23-30, 32-42 (challenging all speech regulations relying on central coverage definition in Count I, the age-verification requirement in Count III, the parental-consent requirement in Count IV, and the prevention-or-mitigation requirement in Count V).

C. NetChoice's As-Applied Challenge

1. The Parties' Arguments

A threshold issue is whether the challenged provisions are subject to First Amendment scrutiny. NetChoice maintains that "[t]he Act is unconstitutional as applied to covered members' services: Dreamwidth, Facebook, Instagram, Nextdoor, Pinterest, Reddit, Snapchat, X, and YouTube." Mem. [50] at 32. The Attorney General responds that "[t]he basic problem with this argument is the same as with its facial argument: NetChoice has not made a *factual* showing of how any provision applies to even one platform—let alone a showing that any application *in fact* intrudes on speech rights." Mem. [54] at 28 (emphasis in original). NetChoice replies that it "has provided three member declarations from Google, Nextdoor, and Dreamwidth discussing how the Act applies to their respective services" and "has also explained how the Act applies to its covered members, both in its own declaration, ECF 49-1, and its pleadings." Reply [56] at 9. The Court concurs

with NetChoice that, based on its evidentiary submissions at this stage of the case, it has made a sufficient factual showing that the Act applies to the aforementioned members.

2. Analysis

a. Whether the Act is Subject to First Amendment Scrutiny

"Laws that directly regulate expressive conduct can, but do not necessarily, trigger" First Amendment scrutiny. *TikTok Inc. v. Garland*, 145 S. Ct. 57, 65 (2025). The Supreme Court has also applied First Amendment scrutiny in cases involving governmental regulation of conduct that carries an expressive element, and to "some statutes which, although directed at activity with no expressive component, impose a disproportionate burden upon those engaged in protected First Amendment activities." *Id.* (quotation omitted).

If a challenged provision is subject to the First Amendment, the Court must then determine the appropriate level of scrutiny to apply. *See id.* at 66-67. Content-based laws, meaning those that target speech based on its communicative content, are subject to strict scrutiny, and "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id.* at 67 (quotation omitted). "[T]he First Amendment, subject only to narrow and well-understood exceptions, does not countenance governmental control over the content of messages expressed by private individuals." *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994).

> Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message

> expressed. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech on its face draws distinctions based on the message a speaker conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Reed v. Town of Gilbert, 576 U.S. 155, 163-64 (2015) (citations and quotations omitted).

"A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech." *Id.* at 165 (quotation omitted). Moreover, "[b]ecause speech restrictions based on the identity of the speaker are all too often simply a means to control content, [the Supreme Court has] insisted that laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Id.* at 170 (quotations omitted); *see also TikTok Inc.*, 145 S. Ct. at 67 (discussing the two forms of content-based speech regulation: (1) a law that is content-based on its face because it applies to particular speech because of the topic discussed or the idea or message expressed, and (2) a facially content-neutral law that is nonetheless treated as a content-based regulation of speech because it cannot be justified without reference to the content of the regulated speech or was adopted by the government because of disagreement with the message the speech conveys).

"Content-neutral laws, in contrast, are subject to an intermediate level of scrutiny because in most cases they pose a less substantial risk of excising certain

ideas or viewpoints from the public dialogue." *TikTok Inc.*, 145 S. Ct. at 67 (quotation omitted). Under this standard, a court will sustain a content-neutral law "if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests." *Id.* (quotation omitted).

Here, at least some provisions of the Act, particularly Sections 4 and 5, limit access to the websites of NetChoice's covered members and directly regulate expressive conduct, implicating the First Amendment as to those covered members. *See id.*; Ex. [1-1] (Miss. H.B. 1126).[4]

H.B. 1126 applies to any service offered by the covered digital service provider that:

> (a) Connects users in a manner that allows users to socially interact with other users on the digital service;
> (b) Allows a user to create a public, semi-public or private profile for purposes of signing into and using the digital service; and
> (c) Allows a user to create or post content that can be viewed by other users of the digital service, including sharing content on:
> (i) A message board;
> (ii) A chat room; or
> (iii) A landing page, video channel or main feed that presents to a user content created and posted by other users.

Ex. [1-1] at 3-4 (Miss. H.B. 1126, § 3). But the Act does not apply to certain things, including a digital service that "[p]rimarily functions to provide a user with access

[4] The Court recognizes that some sections of the Act may not be subject to First Amendment scrutiny. For instance, Section 1 simply sets forth the title of the Act, and Section 2 defines certain terms. But the parties have not addressed whether, for an as-applied challenge, the Court must consider each provision separately. *But see, e.g., Space Expl. Techs. Corp. v. Nat'l Lab. Rels. Bd.*, 741 F. Supp. 3d 630, 638 (W.D. Tex. 2024) (holding that it was premature at preliminary injunction stage to consider whether severance of unconstitutional portions of the statute was possible).

to news, sports, commerce, online video games or content primarily generated or selected by the digital service provider." *Id.* at 4 (Miss. H.B. 1126, § 3(2)(c)(i)).

In *Turner Broadcasting*, the Supreme Court considered statutory provisions that required all cable television systems to devote some of their channels to the transmission of local broadcast television stations, and found that because the provisions were "based only upon the manner in which speakers transmit their messages to viewers, and not upon the messages they carry," they were not content-based and were subject only to an intermediate level of scrutiny. 512 U.S. at 645; *see id.* at 626, 661-62. But H.B. 1126 does not apply to all digital service providers, and specifically excludes from its reach certain providers based upon the primary purpose or subject matter of their service. *See* Ex. [1-1] at 3-5 (Miss. H.B. 1126, §§ 3(1), 3(2)(c)).

"Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed," *Reed*, 576 U.S. at 163, which is precisely what H.B. 1126 does, *see* Ex. [1-1] at 3-5 (Miss. H.B. 1126, §§ 3(1), 3(2)(c)). The Act's content-based distinction is inherent in its definition of "digital service provider," which outlines the scope of the Act's coverage. *See id.* The Act covers some digital service providers based upon their primary function or the content they convey, while specifically excluding others based upon the nature of the speech they communicate. *See id.* Essentially, H.B. 1126 treats or classifies digital service providers differently based upon the nature of the material they disseminate, whether it is "social interaction," *id.* at 3 (Miss.

H.B. 1126, § 3(1)(a)), as opposed to "news, sports, commerce, [or] online video games," *id.* at 4 (Sec. 3(2)(c)(i)). Even if this could be considered a speaker-based distinction, the Supreme Court has held that "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Reed*, 576 U.S. at 170.

Section 3(2)(c)(i) can thus be viewed as either drawing a facial distinction based on the message the digital service provider conveys (i.e., news and sports versus social interaction), or a more subtle content-based restriction defining regulated speech by its function or purpose (i.e., providing news and sports as opposed to facilitating social interaction). *See* Ex. [1-1] at 3 (Sec. 3(2)(c)(i)); *Reed*, 576 U.S. at 163. Either way, "[b]oth are distinctions drawn based on the message a speaker conveys." *Reed*, 576 U.S. at 163-64. And it is of no moment that there is no express restriction on a particular viewpoint, as "[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Id.* at 169 (quotation omitted). Nor is the State's motive relevant, as "[a] law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech." *Id.* at 165 (quotation omitted). The facial distinctions H.B. 1126 draws based on the message a particular digital service provider conveys, or the more subtle content-based restrictions based upon the

speech's function or purpose, render the Act content-based, and therefore subject to strict scrutiny. *See id.*

The Attorney General argues that H.B. 1126 regulates not speech but non-expressive conduct, which the State may regulate if it has a rational basis for doing so. *See* Resp. [54] at 15, 17-20, 26 (citing *City of Dallas v. Stanglin*, 490 U.S. 19, 23-25 (1989)). The Court is not persuaded that H.B. 1126 merely regulates non-expressive conduct, and *Stanglin*, upon which the Attorney General relies, is distinguishable. *See id.* In *Stanglin*, the "city of Dallas adopted an ordinance restricting admission to certain dance halls to persons between the ages of 14 and 18," *Stanglin*, 490 U.S. at 20, and limiting their operating hours to 1 p.m. to midnight, when school was not in session, *id.* at 22. "[T]he owner of one of these 'teenage' dance halls, sued to contest the constitutional validity of the ordinance." *Id.* at 20. "The Texas Court of Appeals held that the ordinance violated the First Amendment right of persons between the ages of 14 and 18 to associate with persons outside that age group." *Id.* at 20-21.

The United States Supreme Court reversed. *Id.* at 21. It reasoned that the ordinance restricted attendance at teenage dance halls "to minors between the ages of 14 and 18 and certain excepted adults. It thus limits the minors' ability to dance with adults who may not attend, and it limits the opportunity of such adults to dance with minors." *Id.* at 24. The Supreme Court recognized that such opportunities for dance-hall patrons "might be described as 'associational' in common parlance, but they simply [did] not involve the sort of expressive

association that the First Amendment has been held to protect." *Id.* at 24. "There [was] no suggestion that these patrons '[took] positions on public questions' or perform[ed] any of the other similar activities described in *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 548, 107 S.Ct. 1940, 1947, 95 L.Ed.2d 474 (1987)," *id.* at 25, including the "right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends," *Duarte*, 481 U.S. at 548.

Unlike *Stanglin*, at this stage of the proceeding there is competent evidence in this case that NetChoice's covered members' websites include users who take positions on, and engage with others in pursuit of, the type of "political, social, economic, educational, religious, and cultural" activities described in *Duarte*. *Id.*; *see also, e.g.,* Ex. [49-1] at 3 ("NetChoice members' websites publish, disseminate, display, compile, create, curate, and distribute a wide range of valuable and protected expression to their users. They disseminate content (text, audio, graphics, and video) that facilitates their users' ability to practice their religious beliefs, engage in political discourse, seek cross-cultural dialogue, supplement their education, learn new skills, and simply interact socially."). The argument that the Act is conduct-based or that *Stanglin* somehow controls is not persuasive. Because H.B. 1126 regulates content, strict scrutiny applies. *See Reed*, 576 U.S. at 163-64.

b. Whether NetChoice Has Shown a Substantial Likelihood of Success on the Merits

The Attorney General contends that the State has a compelling interest in safeguarding the physical and psychological wellbeing of minors online, and that

the Act is narrowly tailored to achieve that interest given "how easily" the age verification requirement can be satisfied. Resp. [54] at 27. The Court accepts as true the Attorney General's position that safeguarding the physical and psychological wellbeing of minors online is a compelling interest. *See id.*; *see also, e.g., Sable Commc'ns of California, Inc. v. F.C.C.*, 492 U.S. 115, 126 (1989) (recognizing that "there is a compelling interest in protecting the physical and psychological well-being of minors").

The State "may serve this legitimate interest, but to withstand constitutional scrutiny, it must do so by narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms." *Sable Commc'ns of California, Inc.*, 492 U.S. at 126 (quotation omitted). "It is not enough to show that the Government's ends are compelling; the means must be carefully tailored to achieve those ends." *Id.* When the ends "affect First Amendment rights they must be pursued by means that are neither seriously underinclusive nor seriously overinclusive." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 805 (2011). "If a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative." *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000).

So, the question here is whether, as applied to NetChoice's covered members, the Act is sufficiently narrowly tailored to promote the State's compelling interest. *See id.*; *Sable Commc'ns of California, Inc.*, 492 U.S. at 126*; TikTok Inc.*, 145 S. Ct. at 70. NetChoice has carried its burden of showing that the Act, as applied to at

least eight of its members, is likely not narrowly tailored to achieve the interests identified by the Attorney General. Based upon the definitions in Sections 2 and 3, including the definition of a covered digital service provider, Section 4 precludes such digital service providers which do not primarily provide certain content (career development opportunities, news, sports, commerce, and online video games) from allowing a user to create an account without registering his or her age, and it requires covered digital service providers to "make commercially reasonable efforts to verify the age of the person creating an account with a level of certainty appropriate to the risks that arise from the information management practices of the digital service provider." Ex. [1-1] at 6 (Miss. H.B. 1126, § 4). Any known minors must then obtain parental consent to open an account with a covered member. *Id.* at 6-7.

NetChoice has presented evidence that minors' parents and guardians already have many tools at their disposal to monitor and control their children's online access, including network-, device-, browser-, and app-level restrictions. *See* Decl. [49-1] at 5-8. And Cleland's Declaration [49-1] reflects that NetChoice's members take measures to protect minors, including by prohibiting minors younger than 13 from accessing their main services, and by having minor-specific policies or practices. *Id.* at 8-9.

The Southern District of Ohio has addressed a similar law and found that NetChoice had shown a likelihood of success on the merits of its claim that foreclosing minors under 18 years old from accessing all content on social media

websites, like the ones H.B. 1126 purports to cover, absent affirmative parental consent was overbroad and therefore unconstitutional. *NetChoice, LLC v. Yost*, 716 F. Supp. 3d 539, 559 (S.D. Ohio 2024). The district court there determined that such an approach was also "an untargeted one, as parents must only give one-time approval for the creation of an account . . . ." *Id.*

In addressing legislation prohibiting minors from purchasing violent video games, the Supreme Court in *Brown* held that is doubtful that "punishing third parties for conveying protected speech to children just in case their parents disapprove of that speech is a proper governmental means of aiding parental authority." *Brown*, 564 U.S. at 802. In *Brown,* as here, there were already a series of preexisting protections offered by the plaintiffs to assist parents. *Id.* at 803; *see also, e.g.,* Ex. [49-1] at 5-6 (averring that "there is much publicly accessible information about the many wireless routers that offer parental control settings parents can use to block specific online services, limit the time that their children spend on the Internet, set individualized content filters, and monitor the online services their children visit"). The Supreme Court concluded that the legislation at issue in *Brown* was "seriously underinclusive," not only because it excluded portrayals of violence other than video games, but also because it permitted a parental veto. *Brown*, 564 U.S. at 805. It further held the legislation was overinclusive because it enforced a governmental speech restriction, subject to parental veto. *Id.* at 804. "And the overbreadth in achieving one goal [was] not cured by the underbreadth in achieving the other." *Id.* at 805.

Here, the Attorney General has not shown that the alternative suggested by NetChoice, the private tools currently available for parents to monitor their children online, *see* Mem. [50] at 25, would be insufficient to secure the State's objective of protecting children, *see, e.g., Brown*, 564 U.S. at 804-05; *see also United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000) (for content-based regulations subject to strict scrutiny, "[i]f a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative"); Ex. [49-1] at 5-19 (discussing existing tools parents can use to oversee and control their minor children's online access and some NetChoice members' current policies that block or limit the publication to minors of content that the Act regulates).

In short, NetChoice has carried its burden of demonstrating that there are a number of supervisory technologies available for parents to monitor their children that the State could publicize. *See* Ex. [49-1] at 5-7. Yet, the Act requires all users (both adults and minors) to verify their ages before creating an account to access a broad range of protected speech on a broad range of covered websites. This burdens the First Amendment rights of adults using the websites of Netchoice's covered members, which makes it seriously overinclusive.[5] But NetChoice has also presented persuasive evidence that "[u]ncertainty about how broadly the Act extends—and how Defendant will interpret the Act—may spur

[5] Minors also have a "significant measure of First Amendment protection," and the State may bar public dissemination of protected materials to minors "only in relatively narrow and well-defined circumstances." *Erznoznik*, 422 U.S. at 212-13. The State does not have a "free-floating power to restrict the ideas to which children may be exposed." *Brown*, 564 U.S. at 794.

members to engage in over-inclusive moderation that would block valuable content from all users," and that not all covered websites have the ability to "age-gate," meaning that "they are unable to separate the content available on adults' accounts from content available on minors' accounts." Ex. [49-1] at 26. This likewise renders H.B. 1126 overinclusive.

The Act also requires all minors under the age of eighteen, regardless of age and level of maturity, to secure parental consent to engage in protected speech activities on a broad range of covered websites, which represents a one-size-fits-all approach to all children from birth to age 17 years and 364-days old. H.B. 1126 is thus overinclusive as to Netchoice's covered members to the extent it is intended as an aid to parental authority beyond the resources for monitoring children's internet activity NetChoice has already identified, because not all children forbidden by the Act to create accounts on their own have parents who will care whether they create such accounts. *See Brown*, 564 U.S. at 789, 804 (holding the state act purporting to aid parental authority by prohibiting the sale or rental of "violent video games" to minors "vastly overinclusive" because "[n]ot all of the children who are forbidden to purchase violent video games on their own have parents who *care* whether they purchase violent video games" (emphasis in original)).

Brown found that the statute in that case was also underinclusive:

> [t]he Act is also seriously underinclusive in another respect . . . leav[ing] this dangerous, mind-altering material in the hands of children so long as one parent (or even an aunt or uncle) says it's OK. And there are not even any requirements as to how this parental or avuncular relationship is to be verified; apparently the child's or putative parent's, aunt's, or uncle's say-so suffices.

Brown, 564 U.S. at 802.

H.B. 1126 similarly requires only one parent or guardian's consent to create an account with a covered member's website, and it does not explain how the parent or guardian relationship is to be verified. *See* Ex. [1-1] at 5-7 (Miss. H.B. 1126, § 4). Section 4(2) states that "[a]cceptable methods of obtaining express consent of a parent or guardian include any of the following" and references examples contained in subsections (a) through (f). *See* Sec. 4(2) ("A digital service provider shall not permit an account holder who is a known minor to be an account holder unless the known minor has the express consent from a parent or guardian."). Only options (d) and (e) mention confirming the identity of the purported parent or guardian, but none of the options, not even options (d) and (e), require verifying that the person who represents himself or herself as the minor's parent or guardian is in fact the parent or guardian. *See* Sec. 4(2)(d)-(e) (discussing collecting information and confirming the identity of the parent or guardian, but not how to verify parental relationship or guardian status). This makes H.B. 1126 underinclusive as applied to NetChoice's covered members. *See Brown*, 564 U.S. at 802.

Finally, Section 6 of H.B. 1126 requires covered Netchoice members "to develop and implement a strategy to prevent or mitigate the known minor's exposure to harmful material and other content that promotes or facilitates" certain harms to minors, Sec. 6(1), but then states that it shall not be construed to require a provider to prevent or preclude "[a]ny minor from deliberately and independently searching for, or specifically requesting, content," Sec. 6(2)(a). Permitting minors

who have presumably obtained parental consent to view otherwise-proscribed content on covered websites, simply because they initiated it by "searching for" or "requesting" it, would not seem to serve the State's compelling interest in protecting minors from the predatory behavior online. H.B. 1126 is underinclusive in this respect as well.

In summary, the record as a whole supports the conclusion that NetChoice has shown that the Act is not narrowly tailored to achieve the State's desired result. NetChoice has demonstrated a substantial likelihood of success on its claim that, as applied to its covered members, H.B. 1126 is either overinclusive or underinclusive, or both, for achieving the State's asserted interest in protecting minors from predatory behavior online. *See Americans for Prosperity Found.*, 594 U.S. at 615; *Brown*, 564 U.S. at 805; *Moody,* 2024 WL 3237685, at *8. As such, the Act is likely not sufficiently narrowly tailored to survive strict scrutiny as applied to at least eight of NetChoice's members: (1) Dreamwidth; (2) Meta, which owns and operates Facebook and Instagram; (3) Nextdoor; (4) Pinterest; (5) Reddit; (6) Snap Inc., which owns and operates Snapchat; (7) X; and (8) YouTube.

Even if, as the Attorney General asserts, the Act were deemed content neutral and subject to intermediate scrutiny, the result would not change. A court will sustain a content-neutral law "if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests." *TikTok Inc.*, 145 S. Ct. at 67 (quotation omitted). To be sufficiently tailored to survive intermediate scrutiny, "a

regulation need not be the least speech-restrictive means of advancing the Government's interests." *Id.* at 70 (quotation omitted). "Rather, the standard is satisfied so long as the regulation promotes a substantial government interest that would be achieved less effectively absent the regulation and does not burden substantially more speech than is necessary to further that interest." *Id.* (quotations omitted); *see also Packingham v. North Carolina*, 582 U.S. 98, 105-06 (2017) (holding that "to survive intermediate scrutiny, a law must be narrowly tailored to serve a significant governmental interest" (quotation omitted)). "While not as exacting as strict scrutiny, intermediate scrutiny is no gimme for the government: Intermediate scrutiny is still tough scrutiny, not a judicial rubber stamp." *Hines v. Pardue*, 117 F.4th 769, 779 (5th Cir. 2024) (quotations and alteration omitted).

Again accepting as true the Attorney General's position that safeguarding the physical and psychological wellbeing of minors online is an important governmental interest, it does not appear that the chosen method for advancing this interest can be said to be unrelated to the suppression of speech, at least as it applies to NetChoice's covered members. *See id.*; *Moody*, 603 U.S. at 740. But even if it were found to be unrelated to suppression of speech, for the reasons the Court has already discussed, the Act nevertheless burdens substantially more speech than is necessary for the State to accomplish its goals. *See TikTok Inc.*, 145 S. Ct. at 70.

For example, Section 4 precludes minors under 18 years old from accessing all content on social media websites, absent affirmative parental consent, regardless

of whether the content concerns or negatively affects minors' physical and psychological wellbeing. *See* Sec. 4(2). Section 6 states that "a digital service provider shall make commercially reasonable efforts to develop and implement a strategy to prevent or mitigate the known minor's exposure to harmful material and other content that promotes or facilitates" certain specified harms. Sec. 6(1). But NetChoice has presented evidence, including Cleland's Declaration [49-1], that the plain terms of the Act seem to require prevention of exposure "not only to protected speech, but also to valuable works of art, literature, and pop culture that are suitable for at least some minors," Ex. [49-1] at 26, as those works may be construed as promoting or facilitating some of the specified harms, such as self-harm, eating disorders, substance use disorders, suicidal behaviors, stalking, grooming, incitement of violence, and any other illegal activities, *see id.*; Sec. 6(1). And Cleland opines that uncertainty about how broadly the Act extends and how the Attorney General will interpret and enforce it "may spur members to engage in over-inclusive moderation." Ex. [49-1] at 26. Thus, as applied to NetChoice's covered members, the Act likely burdens substantially more speech than is necessary for the State to safeguard the physical and psychological wellbeing of minors online. *See id.*; *TikTok Inc.*, 145 S. Ct. at 70.

Simply put, the Act is not sufficiently narrowly tailored to serve the State's interests even under intermediate scrutiny. *See Packingham*, 582 U.S. at 105-06.

NetChoice has shown a substantial likelihood of success on the merits of its as-applied claim. *See id.*; *TikTok Inc.*, 145 S. Ct. at 70; *Moody*, 603 U.S. at 740.[6]

c. Irreparability of Harm

The Court turns next to whether NetChoice's covered members or their users will suffer irreparable harm absent an injunction. "In general, a harm is irreparable where there is no adequate remedy at law, such as monetary damages." *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011). But the mere fact that monetary damages may be available does not always mean that a remedy is adequate. *See id.*

"When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Book People, Inc. v. Wong*, 91 F.4th 318, 340-41 (5th Cir. 2024) (quotation omitted). And the Supreme Court has held that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Here, one potential consequence of knowingly violating the Act includes criminal liability, *see* Sec. 8(2)(q) (making violating the Act an unfair and deceptive trade practice under Section 75-24-5); Miss. Code Ann. § 75-24-20(a) ("Any person who, knowingly and willfully, violates any provision of Section 75-24-5, shall be guilty of a misdemeanor, and upon conviction shall be fined up to One Thousand Dollars ($1,000.00)."), and with respect to compliance

[6] Because NetChoice has shown a substantial likelihood of success on the merits on at least some of its claims, the Court need not consider its remaining preemption claim. *See* Am. Compl. [48] at 43-45.

costs, covered digital service providers may suffer irreparable harm by outlaying financial resources to comply "with no guarantee of eventual recovery" from the State if the Court ultimately enters judgment in their favor, *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 765 (2021). Indeed, at least one of NetChoice's members has presented evidence that the alleged financial injury may threaten the very existence of its business. *See* Ex. [3-5] at 22 (averring that "the Act threatens [Dreamwidth's] ability to continue operating"). The Fifth Circuit has found an injury to be irreparable when compliance costs were likely unrecoverable against a federal agency because it enjoyed sovereign immunity. *See Wages & White Lion Invs., L.L.C. v. United States Food & Drug Admin.*, 16 F.4th 1130, 1142 (5th Cir. 2021). The Court finds this factor weighs in favor of granting a preliminary injunction.

d. Balance of Equities and the Public Interest

The last two factors merge where, as here, the government is the opposing party. *Nken*, 556 U.S. at 435. And "injunctions protecting First Amendment freedoms are always in the public interest." *Texans for Free Enter. v. Texas Ethics Comm'n*, 732 F.3d 535, 539 (5th Cir. 2013). Because the Court has found that NetChoice has shown a substantial likelihood of success on the merits of its claims, the Court finds that an injunction is in the public interest. *See id.*; *see also, e.g., Book People, Inc.*, 91 F.4th at 341 ("Because Plaintiffs are likely to succeed on the merits of their First Amendment claim, the State and the public won't be injured by an injunction of a statute that likely violates the First Amendment."). In sum,

NetChoice has shown that all four factors under Rule 65 favor the entry of a preliminary injunction on its as-applied challenge to Sections 1 through 8 of the Act.

D. NetChoice's Facial Challenge

Because NetChoice has shown a substantial likelihood of success on the merits of its as-applied claim, the Court need not reach its facial challenge to the constitutionality of the Act. *See, e.g., United States v. Jubert*, No. 24-60199, 2025 WL 1577013, at *2 (5th Cir. June 4, 2025) (holding that a court turns to a facially overbroad challenge "only if it is determined that the statute would be valid as applied" (quoting *Buchanan*, 919 F.3d at 854)). The Court is certainly mindful of the Fifth Circuit's mandate remanding this matter for this Court to address the facial challenge under the framework announced in *Moody*. But the procedural posture of this case changed when, following remand, NetChoice filed an Amended Complaint [48] adding, for the first time, an as-applied challenge to the Act. *See* Am. Compl. [48]. Earlier, before both this Court and the Fifth Circuit, and "[a]s in *Moody*, NetChoice chose to bring a facial challenge 'and that decision [came] at a cost.'" *Fitch*, 134 F.4th at 807 (quoting *Moody*, 603 U.S. at 723). NetChoice apparently heeded the Fifth Circuit's advice and added an as-applied challenge on remand. *See* Am. Compl. [48].

Given this altered procedural posture, the Fifth Circuit has been clear that a district court should "generally decide the as-applied challenge first because it is the narrower consideration." *Buchanan*, 919 F.3d at 852. And the Supreme Court has explained that, "although the occasional case requires us to entertain a facial

challenge in order to vindicate a party's right not to be bound by an unconstitutional statute, we neither want nor need to provide relief to nonparties when a narrower remedy will fully protect the litigants." *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 477-78 (1995). Given the foregoing guidance from the Supreme Court and the Fifth Circuit, and because the Court has determined NetChoice has a substantial likelihood of success on the merits of its newly-added as-applied challenge to the Act, it need not reach the facial challenge in order to fully protect the litigants, and it will refrain from doing so in order to avoid "unnecessary adjudication of constitutional issues." *Id.* at 478.

E. Whether the Court Should Require Security

Rule 65(c) states that a court may issue a preliminary injunction "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). "[T]he amount of security required pursuant to Rule 65(c) is a matter for the discretion of the trial court," and the district court "may elect to require no security at all." *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996).

In this case, neither party has raised the issue of security, and Defendant likely will not incur any significant monetary damage as a result of a preliminary injunction, which ensures that the constitutional rights of NetChoice's covered members are protected. Therefore, the Court finds that security is not necessary in this case. *See id.* Other courts have reached the same conclusion under similar

circumstances. *See, e.g., Thomas v. Varnado*, 511 F. Supp. 3d 761, 766 (E.D. La. 2020) (holding that, because neither the school board nor superintendent was likely to incur any significant monetary damages as a result of the preliminary injunction and because the plaintiff was a minor student, it would issue an injunction without security); *Gbalazeh v. City of Dallas*, No. 3:18-CV-0076-N, 2019 WL 2616668, at *2 (N.D. Tex. June 25, 2019) ("The Court exercises its discretion under Federal Rule of Civil Procedure 65(c) to waive the bond requirement, as Plaintiffs are engaged in 'public-interest litigation' to protect their constitutional rights." (quoting *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084 (5th Cir. 1981)).

III. CONCLUSION

Because Plaintiff NetChoice, LLC, has carried its burden of demonstrating a substantial likelihood of success on the merits of its claim that the Act is unconstitutional under a First Amendment as-applied challenge as to certain of its members, the Court will grant the Motion for a Preliminary Injunction without requiring security.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Plaintiff NetChoice, LLC's Motion [49] for Temporary Restraining Order and Preliminary Injunction is **GRANTED IN PART**, to the extent it seeks a preliminary injunction as to its eight covered members: (1) Dreamwidth; (2) Meta, which owns and operates Facebook and Instagram; (3) Nextdoor; (4) Pinterest; (5) Reddit; (6) Snap

Inc., which owns and operates Snapchat; (7) X; and (8) YouTube. The Motion [49] is **DENIED IN PART** as moot, to the extent it seeks a temporary restraining order.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Defendant Mississippi Attorney General Lynn Fitch and her agents, employees, and all persons acting under her direction or control, are **PRELIMINARILY ENJOINED** under Federal Rule of Civil Procedure 65(a) from enforcing Sections 1 through 8 of Mississippi House Bill 1126 against Plaintiff NetChoice, LLC's eight covered members: (1) Dreamwidth; (2) Meta, which owns and operates Facebook and Instagram; (3) Nextdoor; (4) Pinterest; (5) Reddit; (6) Snap Inc., which owns and operates Snapchat; (7) X; and (8) YouTube, pending a final disposition of this case on its merits.

SO ORDERED AND ADJUDGED, this the 18th day of June, 2025.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
CHIEF UNITED STATES DISTRICT JUDGE

Appendix 3

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
April 17, 2025
Lyle W. Cayce
Clerk

No. 24-60341

NetChoice, L.L.C.,

Plaintiff—Appellee,

versus

Lynn Fitch, *in her official capacity as Attorney General of Mississippi*,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:24-CV-170

Before Higginbotham, Willett, and Ho, *Circuit Judges*.

Patrick E. Higginbotham, *Circuit Judge*:

This case continues our struggle with the interface of law and the rapidly changing universe of technology. A recently enacted Mississippi statute would regulate a minor's use of internet platforms. NetChoice, L.L.C. here challenges the statute's constitutionality under the First and Fourteenth Amendments. After the district court granted a preliminary injunction to halt the enforcement of the statute, the Supreme Court issued its opinion in a

separate First Amendment case, *Moody v. NetChoice, LLC*,[1] which reframed the analysis for facial challenges. *Moody* makes clear that the district court here should have undertaken more detailed factual analysis before making the requisite finding for preliminary injunctive relief that NetChoice, L.L.C is substantially likely to succeed on the merits of its facial challenge. We in turn VACATE the preliminary injunction and REMAND this case to the district court for the required factual analysis.

I.

A.

Mississippi House Bill 1126 (the "Act") was signed into law on April 30, 2024 to take effect on July 1, 2024. The Act purports to protect minor children from "online harmful material." To briefly summarize the Act, Section 1 provides the title of the Act; Section 2 defines terms; Section 3 establishes applicability of the Act; Section 4 requires digital service providers ("DSPs") to make "commercially reasonable" efforts to verify users' ages and obtain parental consent before allowing known minors to create an account; Section 5 limits the information of a known minor that a digital service provider may collect; Section 6 requires digital service providers to make commercially reasonable efforts to implement a strategy to mitigate a known minor's exposure to content that facilitates harm to minors; and Sections 7-8 provide civil remedies and criminal penalties for violating the Act.[2]

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[1] 603 U.S. 707 (2024).

[2] Miss. Code Ann. § 45-38-1, *et seq.*; Miss. Code Ann. § 75-24-5.

B.

NetChoice, L.L.C. ("NetChoice") is a nonprofit trade association for internet-focused companies, ranging from AirBnB to PayPal to Wing.[3] NetChoice brought this suit challenging the Act, requesting an order and judgment declaring it to be unlawful as violative of the First Amendment and the Fourteenth Amendment's Due Process Clause, and as overbroad, among other arguments. NetChoice also moved for a preliminary injunction to enjoin Lynn Fitch, in her official capacity as Attorney General of Mississippi, from enforcing the law.

The district court granted a preliminary injunction, finding that NetChoice carried its burden of showing that it is substantially likely to succeed in its contention that the Act is unconstitutional under a First Amendment facial challenge and a Fourteenth Amendment vagueness challenge. The AG appeals the preliminary injunction, alleging that the district court erred in several ways: first, in finding that NetChoice has associational standing; second, in failing to perform the facial analysis mandated by *Moody v. NetChoice, LLC*;[4] third, in rejecting the argument that the Act regulates non-expressive conduct; fourth, in finding that the Act is likely facially void for vagueness; and fifth, by holding that the equities weigh in favor of granting a preliminary injunction.

II.

We first, as we must, address standing.[5] To establish standing, a plaintiff must demonstrate: (1) that it has suffered or likely will suffer an injury in

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[3] NetChoice.org/about.

[4] *See Moody*, 603 U.S. 707.

[5] *Delta Com. Fisheries Ass'n v. Gulf of Mexico Fishery Mgmt. Council*, 364 F.3d 269, 272 (5th Cir. 2004).

fact; (2) that the injury likely was caused or will be caused by the defendant; and (3) that the injury likely would be redressed by the requested judicial relief.[6] A plaintiff must also satisfy "both constitutional limitations on federal-court jurisdiction and prudential limitations on [the court's] exercise."[7] Constitutional standing "enforces the Constitution's case-or-controversy requirement" while prudential standing "embodies judicially self-imposed limits on the exercise of federal jurisdiction."[8]

A.

We turn to constitutional standing, here whether NetChoice can vindicate the rights of its members.

An association has standing to bring claims on behalf of its members when it meets three requirements: (1) its individual members would have standing to bring the suit; (2) the association seeks to vindicate interests germane to its purpose; and (3) neither the claim asserted nor the relief requested requires the individual members' participation.[9] The district court correctly held that NetChoice satisfied the three requirements of associational standing.

NetChoice easily meets the first. As the district court noted, the Supreme Court has recognized that plaintiffs have standing to bring a pre-enforcement facial challenge against a law when "the law is aimed directly at plaintiffs, who, if their interpretation of the statute is correct, will have to take

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[6] *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024).

[7] *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

[8] *Servicios Azucareros de Venez., C.A. v. John Deere Thibodeaux, Inc.*, 702 F.3d 794, 801 (5th Cir. 2012) (cleaned up).

[9] *Students for Fair Admissions, Inc. v. Univ. of Texas at Austin*, 37 F.4th 1078, 1084 (5th Cir. 2022).

significant and costly compliance measures or risk criminal prosecution."[10] The statute would increase regulatory requirements of NetChoice's members, causing financial harm.[11] This alone is sufficient to meet the first requirement of associational standing.[12]

NetChoice can also independently satisfy the first requirement under the theory that the Act will violate its members' First and Fourteenth Amendment rights by proscribing their intended actions and credibly threatening to prosecute those actions.[13] More specifically, NetChoice's members seek to disseminate protected speech to minors and adults, which would be prohibited (at least in part) by the Act, and its members have a Fourteenth Amendment right to be free of impermissibly vague laws.

As for the second requirement, NetChoice has presented evidence that its purpose is "to make the Internet safe for free enterprise and free expression" and as the lawsuit is centered on doing exactly that, it seeks to vindicate interests germane to its purpose.

NetChoice has also satisfied the third requirement of associational standing as no claim asserted nor relief requested requires the participation of each member. Instead, NetChoice's "claims can be proven by evidence from representative injured members" and "the participation of [certain] individual members does not thwart associational standing."[14]

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[10] *Virginia v. American Booksellers Ass'n, Inc.*, 484 U.S. 383, 392 (1988).

[11] One NetChoice member even claims that the Act will jeopardize its ability to continue offering its online service at all.

[12] *Contender Farms, L.L.P. v. U.S. Dep't of Agric.*, 779 F.3d 258, 266 (5th Cir. 2015) ("An increased regulatory burden typically satisfies the injury in fact requirement.").

[13] *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014).

[14] *Ass'n of Am. Physicians & Surgeons, Inc. v. Texas Med. Bd.*, 627 F.3d 547, 552 (5th Cir. 2010).

The AG argues that NetChoice has not satisfied constitutional standing because it lacks organizational standing.[15] But NetChoice need not show organizational standing when it has shown associational standing.[16]

NetChoice has also demonstrated injury in fact, causation, and redressability. As noted by the district court, the Act will cause financial injury to NetChoice's members and "[a]n increased regulatory burden typically satisfies the injury in fact requirement."[17] And the defendant—here, the AG—is the moving force of injury, one that would likely be redressed by the requested judicial declaration that each of the Act's challenged provisions is unconstitutional and ought to be enjoined. NetChoice has satisfied each element of constitutional standing.

B.

We next turn to prudential standing, here whether NetChoice can vindicate the rights of its members' users. Plaintiffs must generally assert their own legal rights and interests, not those of third parties,[18] and injury must be "within the 'zone of interests' protected by the constitutional

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[15] While associational standing allows an association to raise claims based on injuries to its members, organizational standing allows an association to raise claims based on injuries to the association itself. *Students for Fair Admissions, Inc.*, 37 F.4th at 1084 & n.6. *See also OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017) ("Associational standing is derivative of the standing of the association's members, requiring that they have standing and that the interests the association seeks to protect be germane to its purpose. By contrast, organizational standing does not depend on the standing of the organization's members.") (footnotes omitted).

[16] *See Students for Fair Admissions, Inc.* 37 F.4th at 1084 n.6 (stating that organizational standing is an "alternative" to associational standing); *Fund Texas Choice v. Paxton*, 658 F. Supp. 3d 377, 406 (W.D. Tex. 2023).

[17] *Contender Farms, L.L.P.*, 779 F.3d at 266. *See also American Booksellers Ass'n, Inc.*, 484 U.S. at 392 (holding that plaintiffs have standing to bring a pre-enforcement facial challenge to a law when the law would require "significant and costly compliance measures or risk criminal prosecution.").

[18] *Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004).

guarantee invoked."[19] "This rule assumes that the party with the right has the appropriate incentive to challenge (or not challenge) governmental action and to do so with the necessary zeal and appropriate presentation."[20]

However, a plaintiff may assert the rights of another if: (1) that "the party asserting the right has a close relationship with the person who possesses the right," and (2) "there is a hindrance to the possessor's ability to protect his own interests."[21]

The AG brings a litany of arguments challenging NetChoice's prudential standing to bring this suit. But they fall short. The AG argues that NetChoice's members' *users* might have standing, but NetChoice itself does not. But, as we held above, NetChoice itself has associational standing to bring this suit.

The AG also asserts that NetChoice failed to show the third-party standing requirements of (1) a "close relationship" to the users and (2) a "hindrance" to users' ability to protect their own interests. Regarding the "hindrance" requirement for asserting the rights of another, the AG argues that NetChoice did not show that its members are hindered in their efforts to protect their own interests. The AG also urges that users can vindicate their rights by challenging regulations of online platforms.

NetChoice replies that the "close relationship" and "hindrance" requirements have no purchase with claims of First Amendment-protected free speech. NetChoice notes the Supreme Court's holding in *Virginia v. American Booksellers Association* that:

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[19] *Moore ex rel. Moore v. Tangipahoa Parish Sch. Bd.*, 771 F. App'x 540, 543 (5th Cir. 2019) (quoting *Barlow v. Collins*, 397 U.S. 159, 164 (1970)).

[20] *Kowalski*, 543 U.S. at 129.

[21] *Id.* at 130 (quotations omitted).

> in the First Amendment context, litigants are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression.[22]

The Supreme Court has also explained that:

> Within the context of the First Amendment, the Court has enunciated other concerns that justify a lessening of prudential limitations on standing. Even where a First Amendment challenge could be brought by one actually engaged in protected activity, there is a possibility that, rather than risk punishment for his conduct in challenging the statute, he will refrain from engaging further in the protected activity. Society as a whole then would be the loser. Thus, when there is a danger of chilling free speech, the concern that constitutional adjudication be avoided whenever possible may be outweighed by society's interest in having the statute challenged. "Litigants, therefore, are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression."[23]

This court has likewise recognized that in First Amendment facial challenges, "federal courts relax the prudential limitations and allow yet-unharmed litigants to attack potentially overbroad statutes to prevent the statute from chilling the First Amendment rights of other parties not before

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[22] 484 U.S. at 392-93 (cleaned up).

[23] *Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 956–57 (1984) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973)).

the court,"[24] that "[t]he prudential consideration of third-party standing is not applied when a plaintiff demonstrates that a provision that validly restricts its own speech . . . also reaches substantial protected speech," and that a litigant who shows constitutional standing and whose own activities are unprotected "may nevertheless challenge a statute by showing that it substantially abridges the First Amendment rights of other parties not before the court."[25] Another opinion heavily relied upon by the AG also recognizes the "quite forgiving," third-party standing test that applies "[w]ithin the context of the First Amendment."[26]

We have also recognized that vendors may assert the rights of vendees, that doctors may assert the rights of patients, and that employers may assert the rights of employees.[27] Indeed, a business "may properly assert its employees' or customers' First Amendment rights where the violation of those rights adversely affects the financial interests or patronage of the business."[28] With this footing it is plain that an online platform is not barred by prudential standing when it asserts its users' First Amendment rights, at least when the violation of those rights adversely affects the platform.[29] NetChoice satisfies the prudential standing requirement.

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[24] *Doe I v. Landry*, 909 F.3d 99, 114 (5th Cir. 2018) (cleaned up) (citations omitted).

[25] *Serv. Emps. Int'l Union, Loc. 5 v. City of Houston*, 595 F.3d 588, 598 (5th Cir. 2010) (citations omitted).

[26] *Kowalski*, 543 U.S. at 130 (citing *Sec'y of State of Md.*, 467 U.S. at 956).

[27] *Vote.Org v. Callanen*, 89 F.4th 459, 472 (5th Cir. 2023) ("Third-party standing often turns on 'categorized relationships'—*e.g.*, vendor-vendee, doctor-patient, employer-employee. Such standing 'has become firmly established with respect to a number of easily categorized relationships . . . .'") (citation omitted)).

[28] *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248, 1252 (5th Cir. 1995).

[29] *See also American Booksellers Ass'n, Inc.,* 484 U.S. at 393 (holding that a bookstore with constitutional standing was permitted to make First Amendment arguments on behalf of its customers).

III.

The AG also argues that the district court failed to perform the facial analysis mandated by *Moody v. NetChoice, LLC*.[30] As in *Moody*, NetChoice chose to bring a facial challenge "and that decision comes at a cost."[31] It is the plaintiff's burden to establish that not a single set of circumstances exists under which the law would be valid.[32]

"In First Amendment cases, however, [the Supreme Court has] lowered that very high bar. To 'provide[ ] breathing room for free expression,' we have substituted a less demanding though still rigorous standard."[33] "The question is whether 'a substantial number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'"[34]

Moody clarified that to determine whether a substantial number of a law's applications are constitutional relative to a statute's plainly legitimate sweep requires a two-step analysis. The first step is to define the law's scope.[35] That is, the court must determine what activities and what actors are regulated, and whether the law regulates or prohibits those actors from conducting those activities.[36] The second step is "to decide which of the law['s] applications violate the First Amendment, and to measure them against the

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[30] *See* 603 U.S. 707 (2024).

[31] *Id.* at 723.

[32] *Id.* (citations omitted).

[33] *Id.* (citation omitted) (alteration in original).

[34] *Id.* (citations omitted) (alterations in original).

[35] *Id.* at 724.

[36] *Id.* at 723-24.

rest."[37] "If the 'law's unconstitutional applications substantially outweigh its constitutional ones,' then and only then is the law facially unconstitutional."[38]

In *Moody*, the Supreme Court found that this court did not—and the Supreme Court could not—properly apply these steps because the record below was not sufficiently developed to conduct the requisite analysis.[39] On remand in *Paxton*, this court stated its expectation that the district court would determine the actors and activities that the statute would cover.[40] We also mentioned the "serious need of factual development at the second step of the analysis" to determine if the statute in that case violated the First Amendment.[41]

The AG argues that as the district court did not conduct the Supreme-Court-mandated two-step analysis, the preliminary-injunction order must be vacated. The AG highlights that the district court did not discuss the Act's "list of ways to satisfy the parental-consent provision," the Act's use of "commercially reasonable,"[42] or NetChoice's admission that the Act covers seven but not all of its members. These failures show that the district court failed to assess "how [the] law works in all of its applications."[43]

As the Supreme Court released its *Moody* opinion on the same day the district court issued its memorandum opinion and order, it could not have

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[37] *Id.* at 725.

[38] *Paxton*, 121 F.4th at 498 (quoting *Moody*, 603 U.S. at 724).

[39] *Moody*, 603 U.S. at 726 ("the record is underdeveloped").

[40] *Paxton*, 121 F.4th at 499.

[41] *Id.*

[42] The AG asserts that this phrase "ensures that (at least most of) the Act's applications impose no burden on speech."

[43] *Moody*, 603 U.S. 744

knowingly applied the analysis required by *Moody* and it is no surprise that it did not march *Moody* to its two-step music.[44] NetChoice nonetheless argues that the district court "faithfully applied" the *Moody* analysis and completed step one when it "look[ed] at" the actors and activities that the Act covers. To the extent that the district court's analysis was terse, NetChoice asserts "that is only because the Act's scope is undisputed. NetChoice assessed the Act's scope in its complaint and preliminary-injunction briefing. Defendant never disputed those assessments. And Defendant never asserted that the Act regulates any different actors or activities." NetChoice contrasts this case's posture with *Moody*'s, where there were questions about which applications and services might be regulated by the laws there at issue.

As to the second step, NetChoice urges that the district court did find that "a substantial number, if not all, of [the Act]'s applications are unconstitutional judged in relation to its legitimate sweep."

True, while the district court did discuss the Act's inclusion and exclusion of some of the activities and actors arguably regulated by the law, it "did not address the full range of activities the law[] cover[s]," as required by *Moody*.[45]

It did not determine whether the Act applies to DSPs like Uber, Google Maps, DraftKings, Microsoft Teams, Reddit, Pinterest, or X. Uber, for example, arguably connects users (independent contractor drivers and customers of those independent contractors) and allows them to socially interact with other users on Uber's app through messages. It also allows a user to create a private profile for signing into and using Uber and to post content that can be viewed by other users of the digital service (e.g., the driver and

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[44] *See id.* at 723-24.

[45] 603 U.S. at 724.

customer see each other's profiles' content when matched by Uber). Microsoft Teams also allows individuals to socially interact after creating a semi-public profile for purposes of signing into and using Microsoft Teams and to create content that can be used by other users. One could even puzzle over whether Google Mail is covered by the Act: it is a DSP, but it may or may not be excepted from the Act's coverage as it does not facilitate "only" e-mail or direct messaging—it also facilitates Google Meet video chats. The district court did not determine whether the Act applies to any of these actors, among many others. By not determining the full scope of actors regulated by the Act and the activities it regulates, the district court did not apply *Moody* in the manner now required.

The district court also did not determine the "commercially reasonable efforts," as used in the Act, or the Act's requirements for each DSP, requirements likely to be different with each DSP facing a unique regulatory burden. Some DSPs may not need to devote additional resources to prevent known minors from holding an account without express parental consent, verify the age of anyone seeking to create an account, or implement a strategy to mitigate minors' exposure to certain content. For other DSPs, these requirements may reach beyond their resources. Without a factual analysis determining the commercially reasonable effort demanded of each individual DSP, the district court could not "decide which of the law['s] applications violate the First Amendment, and . . . measure them against the rest."[46] Nor could the district court determine whether "the 'law's unconstitutional applications substantially outweigh its constitutional ones.'"[47]

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[46] *Moody*, 603 U.S. at 725.

[47] *Paxton*, 121 F.4th at 498 (citation omitted).

As in *Moody*, a factual inquiry remains for the district court to resolve: It must determine to whom the Act applies the activities it regulates, and then weigh violative applications of the Act against non-violative applications. As the district court understandably did not conduct this analysis, its finding that NetChoice showed a substantial likelihood of success on the merits of its claim that the Act is facially unconstitutional under the First Amendment cannot now stand.

IV.

We VACATE the preliminary injunction and REMAND this case to the district court for further proceedings consistent with the Supreme Court's opinion in *Moody* and Fifth Circuit precedent in *NetChoice, LLC v. Paxton*.

JAMES C. HO, *Circuit Judge*, concurring in the judgment:

In *Brown v. Entertainment Merchants Association*, 564 U.S. 786 (2011), Justice Thomas made clear that nothing in the First Amendment prevents states from helping parents protect their children by regulating their access to certain content. *See id.* at 821–39 (Thomas, J., dissenting). As he explained, "[t]he practices and beliefs of the founding generation establish that 'the freedom of speech,' as originally understood, does not include a right to speak to minors (or a right of minors to access speech) without going through the minors' parents or guardians." *Id.* at 821 (quoting U.S. CONST. amend. I). *Cf. Book People, Inc. v. Wong*, 98 F.4th 657, 659 (5th Cir. 2024) (per curiam) (Ho, J., dissenting from denial of rehearing en banc) ("States have a profound interest in protecting the innocence of children from various adult activities. . . . Nothing in the First Amendment prevents states from taking steps to shield children from [sexually explicit] content.").

If Justice Thomas's views in *Brown* were the law of the land, it would be a relatively easy matter for us to reverse the district court and uphold the Mississippi law challenged in this case.

But they're not. So I agree with my distinguished colleagues that we should vacate the preliminary injunction and remand for further proceedings consistent with *Moody v. NetChoice*, 603 U.S. 707 (2024).

Appendix 4

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
August 1, 2024
Lyle W. Cayce
Clerk

No. 24-60341

NetChoice, L.L.C.,

Plaintiff—Appellee,

versus

Lynn Fitch, *in her official capacity as Attorney General of Mississippi*,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:24-CV-170

UNPUBLISHED ORDER

Before Ho, Wilson, and Ramirez, *Circuit Judges*.

Per Curiam:

IT IS ORDERED that Appellant's opposed motion to stay the preliminary injunction pending appeal is CARRIED WITH THE CASE.

JAMES C. HO, *Circuit Judge*:

The motion for a stay pending appeal should be granted. Under the order issued today, the argument panel can do so. *See*, *e.g.*, *Woodlands Pride, Inc. v. Paxton*, No. 23-20480 (5th Cir. Feb. 20, 2024) (Ho, J.); *see also MCR Oil Tools, L.L.C. v. U.S. Dep't of Transportation*, 102 F.4th 326 (5th Cir. 2024).

Appendix 5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

NETCHOICE, LLC	§	**PLAINTIFF**
	§	
	§	
v.	§	**Civil No. 1:24-cv-170-HSO-BWR**
	§	
	§	
LYNN FITCH,	§	
in her official capacity as	§	
Attorney General of Mississippi	§	**DEFENDANT**

MEMORANDUM OPINION AND ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF NETCHOICE, LLC'S MOTION [3] FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER, AND PRELIMINARILY ENJOINING ENFORCEMENT OF MISSISSIPPI HOUSE BILL 1126

BEFORE THE COURT is Plaintiff NetChoice, LLC's Motion [3] for Preliminary Injunction and Temporary Restraining Order, seeking to enjoin Mississippi House Bill 1126 ("H.B. 1126" or the "Act") which was signed into law on April 30, 2024, and is set to take effect on July 1, 2024. Plaintiff asks this Court for an order preliminarily enjoining Defendant Lynn Fitch, in her official capacity as Mississippi Attorney General—and her agents, employees, and all persons acting under her direction or control—from taking any action to enforce H.B. 1126 or the challenged portions of H.B. 1126 before its July 1, 2024, effective date. *See* Mot. [3]. *Amicus Curiae* Electronic Frontier Foundation has filed a Brief in support of Plaintiff's Motion, *see* Br. [25], and Attorney General Fitch has filed a Response in opposition, *see* Resp. [26]. After consideration of the record in this case, relevant legal authority, and the record of the hearing held on June 26, 2024, the Court finds

that a preliminary injunction should issue. Plaintiff's request for a temporary restraining order will be denied as moot.

I. BACKGROUND

A. Mississippi H.B. 1126

Plaintiff challenges Sections 1-8 of H.B. 1126, which provide in relevant part as follows:

> SECTION 3. (1) This act applies only to a digital service provider who provides a digital service that:
> (a) Connects users in a manner that allows users to socially interact with other users on the digital service;
> (b) Allows a user to create a public, semi-public or private profile for purposes of signing into and using the digital service; and
> (c) Allows a user to create or post content that can be viewed by other users of the digital service, including sharing content on:
> (i) A message board;
> (ii) A chat room; or
> (iii) A landing page, video channel or main feed that presents to a user content created and posted by other users.
> (2) This act does not apply to:
> (a) A digital service provider who processes or maintains user data in connection with the employment, promotion, reassignment or retention of the user as an employee or independent contractor, to the extent that the user's data is processed or maintained for that purpose;
> (b) A digital service provider's provision of a digital service that facilitates e-mail or direct messaging services, if the digital service facilitates only those services;
> (c) A digital service provider's provision of a digital service that:
> (i) Primarily functions to provide a user with access to news, sports, commerce, online video games or content primarily generated or selected by the digital service provider; and
> (ii) Allows chat, comment or other interactive functionality that is incidental to the digital service; or
> (d) A digital service provider's provision of a digital service that primarily functions to provide a user with access to career development opportunities, including:
> (i) Professional networking;
> (ii) Job skills;

(iii) Learning certifications;
(iv) Job posting; and
(v) Application services.

* * *

SECTION 4. (1) A digital service provider may not enter into an agreement with a person to create an account with a digital service unless the person has registered the person's age with the digital service provider. A digital service provider shall make commercially reasonable efforts to verify the age of the person creating an account . . . .

(2) A digital service provider shall not permit an account holder who is a known minor to be an account holder unless the known minor has the express consent from a parent or guardian . . . .

* * *

SECTION 6. (1) In relation to a known minor's use of a digital service, a digital service provider shall make commercially reasonable efforts to develop and implement a strategy to prevent or mitigate the known minor's exposure to harmful material and other content that promotes or facilitates the following harms to minors:

(a) Consistent with evidence-informed medical information, the following: self-harm, eating disorders, substance use disorders, and suicidal behaviors;
(b) Patterns of use that indicate or encourage substance abuse or use of illegal drugs;
(c) Stalking, physical violence, online bullying, or harassment;
(d) Grooming, trafficking, child pornography, or other sexual exploitation or abuse;
(e) Incitement of violence; or
(f) Any other illegal activity.

(2) Nothing in subsection (1) shall be construed to require a digital service provider to prevent or preclude:

(a) Any minor from deliberately and independently searching for, or specifically requesting, content . . . .

Ex. [1-1] at 3-9 (Miss. H.B. 1126, §§ 3-4, 6).

In summary, Section 4(1) of H.B. 1126 requires all users, adults and minors alike, to verify their age before they may open an account with non-excluded digital service providers (the "age-verification requirement"), while Section 4(2) requires parental consent before a known minor may create an account (the "parental-

consent requirement"). *Id.* Section 5 contains a limitation for collection of data by non-excluded digital service providers that enter into an agreement with a known minor for access to a digital service (the "data-collection limitation"),[1] and Section 6 requires those digital service providers to make commercially reasonable efforts to develop and implement a strategy to prevent or mitigate the known minor's exposure to harmful material and other content that promotes or facilitates certain harms to minors (the "prevention-or-mitigation requirement").[2] *See id.* But Section 6(2) does not require digital service providers to prevent or preclude minors with accounts from "deliberately and independently searching for, or specifically requesting, content." *Id.* Sections 7 and 8 of the Act provide civil remedies and criminal penalties for its violation. *See id.* at 9-12.

B. NetChoice

Plaintiff NetChoice, LLC ("NetChoice" or "Plaintiff") is a nonprofit trade association for internet companies. Compl. [1] at 4. Its Complaint [1] asserts that H.B. 1126 regulates some services offered by the following of NetChoice's members: (1) Dreamwidth; (2) Google, which owns and operates YouTube; (3) Meta, which owns and operates Facebook and Instagram; (4) Nextdoor; (5) Pinterest; (6) Snap,

[1] Plaintiff does not appear to challenge the data-collection limitation specifically. *Amicus curiae* Electronic Frontier Foundation notes that, "while the data privacy provisions of this law are not severable from the unconstitutional age-verification regime Mississippi House Bill 1126 imposes, that does not render those provisions independently unconstitutional. Should the law's data privacy provisions appear in a well-crafted comprehensive privacy law that did not require age verification, they would be subject to a different standard and could likely satisfy First Amendment scrutiny." Br. [25] at 8-9.

[2] Plaintiff refers to this as a monitoring-and-censorship requirement, *see* Compl. [1] at 27-28, while Defendant refers to it as the strategy provision, *see* Resp. [26] at 9-10.

Inc., which owns and operates Snapchat; and (7) X. Compl. [1] at 4. Some of these "members operate websites that are among the Internet's most popular destinations, disseminating billions of user-generated posts," and, according to NetChoice's Vice President and General Counsel Carl Szabo ("Szabo"), its members' "websites are full of a wide range of valuable expression and communities." Ex. [3-2] at 4. "Whether it is to practice their religious beliefs, engage in political discourse, seek cross-cultural dialogue, supplement their education, or learn new skills, people across the nation and world (minors and adults alike) use these websites every day to explore protected speech." *Id.*

Szabo's Declaration states that "[i]n general, members' websites publish, disseminate, create, curate, or distribute protected speech, or all of the above . . . by displaying text, audio, graphics, or video to users." *Id.* at 5. NetChoice members' websites "disseminate different expressive content in different ways to serve different user bases"; some of the content is generated by the websites themselves, some of it by advertisements, and much of the content is generated by users, "who sometimes use these websites to share content with a website-specific list of 'friends' (or 'connections') and sometimes use these websites to share with the world at large." *Id.*

C. Plaintiff's Complaint [1]

NetChoice filed its Complaint [1] for Declaratory and Injunctive Relief in this Court on June 7, 2024, raising First Amendment facial challenges to the Act's central coverage definition (Count I), age-verification requirement (Count III),

parental-consent requirement (Count IV), and the prevention-or-mitigation requirement[3] (Count V). Alternatively, the Complaint alleges that the Act is overbroad, *see* Compl. [1] at 18-22, 25-33 (Counts I, III, IV, V); Mem. [4] at 15-30, and that its central coverage definition of "digital service provider" is unconstitutionally vague and violates principles of free speech and due process, Compl. [1] at 23-24, 33-34 (Count II, VI); Mem. [4] at 30-31. The Complaint [1] further alleges that 47 U.S.C. § 230 preempts the monitoring-and-censorship requirements in Section 6. Compl. [1] at 35-36 (Count VII). Plaintiff seeks equitable relief enjoining Defendant from enforcing the Act, *see id.* at 36 (Count VIII), and a declaration that each of the Act's challenged provisions is unconstitutional and otherwise unlawful, *see id.* at 36-37 (Count IX).

D. Plaintiff's Motion [3] for Preliminary Injunction and Temporary Restraining Order

NetChoice's Motion [3] contends that H.B. 1126 "will unconstitutionally impede both adults and minors' access to vast amounts of constitutionally protected speech on a broad range of websites." Mot. [3] at 1. It argues that the First Amendment "does not permit the Act's requirements for covered websites to verify the ages of their users or to secure parental consent before allowing minors to access the websites," and "[s]imilarly, the First Amendment and 47 U.S.C. § 230 do not allow the government to choose what content- and viewpoint-based categories of users' speech websites cannot disseminate." *Id.* NetChoice maintains that "[t]he

[3] The Complaint refers to this as the monitoring-and-censorship requirement. Compl. [1] at 27-28.

entire Act is also unconstitutionally vague, and sections 1-8 . . . likewise violate both the First Amendment and the Due Process Clause of the Fourteenth Amendment." *Id.*

Amicus Curiae Electronic Frontier Foundation ("EFF") has filed a Brief [25] in support of Plaintiff's Motion [3] "to emphasize how online age restrictions significantly burden the speech and privacy rights of all internet users, not just minors." Br. [25] at 8. EFF contends that "age verification imposes significant burdens on adults' access to constitutional speech and 'discourage[s] users from accessing' the online services that require that verification." *Id.* at 9 (quoting *Reno v. ACLU*, 521 U.S. 844, 856 (1997)). EFF posits that, because "[i]nternet users are highly sensitive to website access barriers, . . . age verification is likely to notably reduce adult users' willingness to consume or create protected content on a site," *id.*, and is much more privacy-invasive and carries with it security risks, *id.* at 11. Moreover, unlike other in-person ID checks where adults face less difficulty before purchasing products and are only precluded from buying adult content if their age cannot be verified, "the inability to verify an adult's age online will block their access to *all* content on the given platform—a much more significant and damaging First Amendment burden." *Id.* at 10 (emphasis in original).

Even if an adult's age can be reliably and non-intrusively verified, EFF argues that the online age verification requirement chills users from accessing protected speech by impermissibly burdening the right to be anonymous online and by putting users' most sensitive data at risk of inadvertent disclosure or data

breach. *See id.* at 14-18. EFF contends that the burden placed on adult user rights is significant, *see id.* at 18-20, and that "[w]hile Mississippi may have an interest in protecting children from harms, its efforts to accomplish that goal cannot be at the expense of the rights of adults to access constitutionally protected speech," *id.* at 20.

The Attorney General responds that "NetChoice fails to establish standing to bring a First Amendment claim against any of the provisions on which it seeks injunctive relief." Resp. [26] at 8; *see id.* at 8-11. To the extent NetChoice has standing, the Attorney General contends that H.B. 1126 permissibly regulates conduct, not speech, and is not subject to heightened First Amendment scrutiny; rather, rational-basis review applies. *See id.* at 11-15. As for Plaintiff's overbreadth argument concerning what the Court refers to as the Act's prevention-or-mitigation requirement, the Attorney General asserts that "NetChoice cannot show that a statute that reaches and regulates so much harmful, unprotected, and illegal conduct lacks a sufficiently 'lawful sweep.'" *Id.* at 15.

The Attorney General further contends that Plaintiff's arguments that the three challenged provisions are subject to strict scrutiny because they are content-based, speaker-based, or viewpoint-based fail because they are in fact based on conduct and harm, not speech and expression. *See id.* at 16-17. Even if the Act could be said to regulate to some extent based on content such that intermediate scrutiny applies, the Attorney General insists that the Act satisfies it. *See id.* at 17-19. To the extent the Court finds that strict scrutiny applies, the Attorney

General also argues that it is satisfied. *See id.* at 19-23. "[T]he State has a compelling interest in protecting minors from the predatory behavior that is commonplace on the interactive social-media platforms that the Act covers," *id.* at 20, and "the Act is narrowly tailored to protect minors from the harms inflicted by online predators," *id.* at 21; *see id.* at 21-22. Next, the Attorney General states that NetChoice is likely to lose on its vagueness claim because "[t]he Act is clear about who and what it covers," *id.* at 23, and it gives fair notice, *see id.* at 23-27. Finally, Plaintiff likely will not succeed on its preemption claim because 47 U.S.C. § 230 does not excuse platforms from complying with state laws that require the platforms "to take steps to help protect children from harmful interactive online conduct." *Id.* at 27; *see id.* at 27-29.

NetChoice replies that it has associational standing and standing to invoke users' rights. *See* Reply [27] at 3-5. It maintains that the challenged provisions violate the First Amendment, as they regulate protected speech—not just conduct—triggering strict scrutiny, *see id.* at 5-8, and that "the Act is not remotely tailored" to the one interest the Attorney General invokes, protecting children from online predatory harm, and "certainly is not the least restrictive means of doing so," *id.* at 8 (quotation omitted). Plaintiff argues that the entire Act is also underinclusive and that its vagueness claims are likely to succeed. *See id.* at 9-10.

II. DISCUSSION

This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343. A preliminary injunction under Federal Rule of Civil Procedure 65(a) is an extraordinary remedy, requiring the moving party to establish four factors:

> (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

Mock v. Garland, 75 F.4th 563, 577 (5th Cir. 2023) (quotation omitted). When the government is the opposing party, the last two factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Movant bears the burden of persuasion on all requirements. *Mock*, 75 F.4th at 587.

A. NetChoice's standing to maintain this suit

This Court must first determine whether NetChoice has standing to bring these claims. "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. This inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

NetChoice advances claims not only on its members' behalf but also on behalf of its members' users. *See* Compl. [1]. "A party ordinarily may assert only 'his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.'" *Vote.Org v. Callanen*, 89 F.4th 459, 472 (5th Cir.

2023) (quoting *Warth*, 422 U.S. at 499). But this is a prudential rule, not a constitutional one. *Id.* "Third-party standing often turns on categorized relationships — e.g., vendor-vendee, doctor-patient, employer-employee." *Id.* (quotation omitted). "Vendors are routinely accorded standing to assert the constitutional rights of customers and prospective customers." *Id.* (quotation omitted).

1. Constitutional standing

To establish Article III constitutional standing, "a plaintiff must demonstrate (i) that [it] has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *Food & Drug Admin. v. All. for Hippocratic Med.*, 144 S. Ct. 1540, 1555 (2024).

According to the Complaint [1], Plaintiff NetChoice is a nonprofit trade association for internet companies. *See* Compl. [1] at 4. It asserts both associational standing and organizational standing to challenge the Act in its own right. *See id.* at 4-5. NetChoice also claims that it may assert a violation of the First Amendment rights of its members' current and prospective users. *See id.* at 5 (citing *Virginia v. Am. Booksellers Ass'n, Inc.,* 484 U.S. 383, 392-93 (1988)); Mem. [4] at 15.

The Court first considers whether NetChoice has associational standing. Associational standing derives from an association's members, and an association

> has standing to bring claims on behalf of its members when (1) individual members would have standing, (2) the association seeks to

> vindicate interests germane to its purpose, and (3) neither the claim asserted nor the relief requested requires the individual members' participation.

Students for Fair Admissions, Inc. v. Univ. of Texas at Austin, 37 F.4th 1078, 1084 (5th Cir. 2022) (footnote omitted). Individuals have standing to sue if they "(1) have suffered an injury in fact, (2) that is fairly traceable to the challenged action of the defendant, and (3) that will likely be redressed by a favorable decision." *Ass'n of Am. Physicians & Surgeons Educ. Found. v. Am. Bd. of Internal Med.,* 103 F.4th 383, 390 (5th Cir. 2024) (quotation omitted). "[S]tanding rules are relaxed for First Amendment cases so that citizens whose speech might otherwise be chilled by fear of sanction can prospectively seek relief." *Id.*

The Attorney General argues that NetChoice does not have associational standing because it has not shown that its members would have standing to sue in their own right, as NetChoice "presses the claims not of its members but of its members' *users*." Resp. [26] at 9 (emphasis in original). The Attorney General argues that NetChoice members' harms are merely financial, *see id.* at 9-10, but such harm does not preclude a finding of standing. "An increased regulatory burden typically satisfies the injury in fact requirement." *Contender Farms, L.L.P. v. U.S. Department of Agriculture*, 779 F.3d 258, 266 (5th Cir. 2015). The Supreme Court has held that plaintiffs have standing to bring a pre-enforcement facial challenge when "the law is aimed directly at plaintiffs, who, if their interpretation of the statute is correct, will have to take significant and costly compliance

measures or risk criminal prosecution." *American Booksellers Association, Inc.*, 484 U.S. at 392.

That is the situation here. The record reflects that many of NetChoice's members would incur substantial compliance costs should the Act go into effect. *See, e.g.,* Ex. [3-2] at 24 ("Any website that even attempts to comply with the Act will incur substantial, unrecoverable costs in reconfiguring their service."); Ex. [3-3] at 20 ("Developing and maintaining systems to verify the ages of teenagers to the level of certainty that could be required by the Act is highly complex, human-resource intensive, and time consuming—resulting in unrecoverable compliance costs.").

Those members that believe they would be covered by the Act aver they would need to develop protocols for complying with its requirements; otherwise, they face the risk of civil or criminal penalties. NetChoice argues that the economic risk is particularly acute because the Act is vague, insufficiently apprising its members as to whether they must comply, which may result in members spending even more funds when they err on the side of caution in attempting to comply. *See* Ex. [3-3] at 20; Ex. [3-5] at 23. For at least one member, "the Act will force [it] . . . to spend money far in excess of [its] available budget" and "will jeopardize [its] ability to continue offering the service at all." Ex. [3-5] at 23.

A compliance cost injury alone is sufficient, *see American Booksellers Association, Inc.*, 484 U.S. at 392, but NetChoice also argues that its members' First and Fourteenth Amendment rights will be violated, *see* Mem. [4] at 15-31. "[A]

plaintiff satisfies the injury-in-fact requirement where he alleges an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quotation omitted). Specifically, NetChoice maintains that its members have a well-established First Amendment right to "disseminate" protected speech by and to minors and adults alike, and a Fourteenth Amendment right to have laws be reasonably clear about the entities to which they apply. *See* Mem. [4] at 15-23. This is sufficient to establish the first prong of associational standing.

The second and third prongs of the associational standing test are also satisfied. NetChoice presents evidence that its purpose is "to make the Internet safe for free enterprise and free expression." Ex. [3-2] at 3. This lawsuit, which is centered on protecting these interests, is germane to that purpose. Nor would this case require each member of the association to participate because the nature of the suit is unlikely to require fact-intensive inquiry of each member. *See, e.g., NetChoice, LLC v. Yost*, No. 2:24-CV-00047, 2024 WL 555904, at *5 (S.D. Ohio Feb. 12, 2024) (reaching the same conclusion with respect to a similar lawsuit brought by NetChoice challenging a parental notification law in Ohio). Having concluded that NetChoice has associational standing to bring this lawsuit, the Court need not resolve whether it has organizational standing.

2. Prudential standing

The Court next considers whether NetChoice is entitled to bring its specific claims, meaning whether it has prudential standing. The Supreme Court has "adhered to the rule that a party generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004) (quotation omitted). "The alleged injury must be within the 'zone of interests' protected by the constitutional guarantee invoked." *Moore as next friend to Moore v. Tangipahoa Parish School Board*, 771 F. App'x 540, 543 (5th Cir. 2019) (per curiam) (quoting *Barlow v. Collins*, 397 U.S. 159, 164 (1970)).

"This rule assumes that the party with the right has the appropriate incentive to challenge (or not challenge) governmental action and to do so with the necessary zeal and appropriate presentation." *Kowalski*, 543 U.S. at 129. But the Supreme Court has also acknowledged that there are circumstances where it might be necessary to recognize a third party's standing to assert the rights of another. *See id.* at 129-30. The Supreme Court has "limited this exception by requiring that a party seeking third-party standing make two additional showings" – (1) "whether the party asserting the right has a close relationship with the person who possesses the right," and (2) "whether there is a hindrance to the possessor's ability to protect his own interests." *Id.* at 130 (quotations omitted).

The Attorney General does not dispute that NetChoice, a member-based organization, has prudential standing to bring a claim on behalf of its members.

See Resp. [26] at 10-11. But she challenges NetChoice's attempt to vindicate the First Amendment rights of users of the members' websites. *See id.*

Two district courts have recently conducted thorough analyses of NetChoice's prudential standing to challenge similar state laws imposing age-verification requirements on many of its members. *See NetChoice, LLC v. Yost*, No. 2:24-CV-00047, 2024 WL 555904, at *5 (S.D. Ohio Feb. 12, 2024); *NetChoice, LLC v. Griffin*, No. 5:23-CV-05105, 2023 WL 5660155, at *12 (W.D. Ark. Aug. 31, 2023). The Court finds this authority persuasive and that NetChoice "is in a unique position to advocate for the rights of [Mississippi] users and may appropriately do so here." *Griffin*, 2023 WL 5660155, at *12. In sum, based upon the record before the Court, NetChoice has demonstrated its associational standing to bring claims on behalf of both its members and its members' Mississippi users.

B. Likelihood of success on the merits

Having concluded that NetChoice has standing to advance its claims, the Court considers the first factor for obtaining a preliminary injunction, whether NetChoice has a substantial likelihood of success on the merits of its claims.

1. Whether H.B. 1126 regulates content

"[T]he First Amendment provides in relevant part that 'Congress shall make no law . . . abridging the freedom of speech,'" and "the Fourteenth Amendment makes the First Amendment's Free Speech Clause applicable against the States." *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 808 (2019). The First Amendment protects both freedom of speech as well as the "right to receive

information and ideas, regardless of their social worth." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). "[T]he right to receive ideas follows ineluctably from the *sender's* First Amendment right to send them" and "is a necessary predicate to the *recipient's* meaningful exercise of his own rights of speech, press, and political freedom." *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982) (plurality opinion) (emphasis in original).[4]

In this case, NetChoice raises a traditional facial challenge and, alternatively, an overbreadth challenge to H.B. 1126. *See* Compl. [1] at 18-22, 25-33 (Counts I, III, IV, V); Mem. [4] at 15-30. NetChoice also contends that the Act's central coverage definition of a "digital service provider" is unconstitutionally vague and violates principles of free speech and due process. Compl. [1] at 23-24, 33-34 (Count II, VI); Mem. [4] at 30-31. Finally, NetChoice asserts that 47 U.S.C. § 230 preempts the so-called "monitoring-and-censorship requirements" in Section 6. Compl. [1] at 35-36 (Count VII).

"Normally, a plaintiff bringing a facial challenge must establish that no set of circumstances exists under which the law would be valid, or show that the law lacks a plainly legitimate sweep." *Americans for Prosperity Found. v. Bonta*, 594 U.S.

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[4] H.B. 1126's primary focus is minors. But "minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them." *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212-13 (1975) (citation omitted). "No doubt a State possesses legitimate power to protect children from harm, but that does not include a free-floating power to restrict the ideas to which children may be exposed." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 794 (2011) (citations omitted). "Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them." *Id.* at 795 (quoting *Erznoznik*, 422 U.S. at 213-214).

595, 615 (2021) (quotations omitted). In the First Amendment context, however, the Supreme Court has "recognized a second type of facial challenge, whereby a law may be invalidated as overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Id.* (quotation omitted); *see Moody v. NetChoice, LLC*, No. 22-277, 2024 WL 3237685, at *8 (U.S. July 1, 2024).

"[T]he First Amendment, subject only to narrow and well-understood exceptions, does not countenance governmental control over the content of messages expressed by private individuals." *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994). "[T]he most exacting scrutiny" is applied "to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content." *Id.* at 642. A state "has no power to restrict expression because of its message, its ideas, its subject matter, or its content," and "[c]ontent-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (quotation omitted).

> Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech on its face draws distinctions based on the message a speaker conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Id. at 163-64 (citations and quotations omitted). "A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech." *Id.* at 165 (quotation omitted). Moreover, "[b]ecause speech restrictions based on the identity of the speaker are all too often simply a means to control content, [the Supreme Court has] insisted that laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Id.* at 170 (quotations omitted).

In this case, each of the challenged sections of the Act relies upon the definition of a "digital service provider." H.B. 1126 applies to any digital service that:

> (a) Connects users in a manner that allows users to socially interact with other users on the digital service;
> (b) Allows a user to create a public, semi-public or private profile for purposes of signing into and using the digital service; and
> (c) Allows a user to create or post content that can be viewed by other users of the digital service, including sharing content on:
> (i) A message board;
> (ii) A chat room; or
> (iii) A landing page, video channel or main feed that presents to a user content created and posted by other users.

Sec. 3(1). But the Act does not apply to certain things, including a digital service that "[p]rimarily functions to provide a user with access to news, sports, commerce, online video games or content primarily generated or selected by the digital service provider." Sec. 3(2)(c)(i).

In *Turner Broadcasting System*, the Supreme Court considered must-carry provisions of a regulation that extended to all cable programmers, and found that because the provisions were "based only upon the manner in which speakers transmit their messages to viewers, and not upon the messages they carry," they were not content based. 512 U.S. at 645. But H.B. 1126 does not apply to all digital service providers, specifically excluding from its reach certain providers based upon the primary purpose or subject matter of their service. *See* Sec. 2(c); Sec. 3.

"Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed," *Reed*, 576 U.S. at 163, which is precisely what H.B. 1126 does, *see* Sec. 3(1); Sec. 3(2)(c)(i). The law's content-based distinction is inherent in the definition of "digital service provider," which is at the core of defining the Act's coverage. *See* Sec. 3. Even if this were considered a speaker-based distinction, the Supreme Court has held that "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Reed*, 576 U.S. at 170. In essence, H.B. 1126 treats or classifies digital service providers differently based upon the nature of the material that is disseminated, whether it is "social interaction," *see* Sec. 3(1)(a), as opposed to "news, sports, commerce, [or] online video games," Sec. 3(2)(c)(i).

Section 3(2)(c)(i) can thus be viewed as either drawing a facial distinction based on the message the digital service provider conveys (i.e., news and sports), or

based on a more subtle content-based restriction defining regulated speech by its function or purpose (i.e., providing news and sports). *See* Sec. 3(2)(c)(i); *Reed*, 576 U.S. at 163. Either way, "[b]oth are distinctions drawn based on the message a speaker conveys." *Reed*, 576 U.S. at 163-64. It is of no moment that there is no express restriction on a particular viewpoint, as "[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Id.* at 169 (quotation omitted). Nor is the State's motive considered, as "[a] law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech." *Id.* at 165 (quotation omitted). The facial distinction in H.B. 1126 based on the message the digital service provider conveys, or the more subtle content-based restriction based upon the speech's function or purpose, makes the Act content-based, and therefore subject to strict scrutiny. *See id.*

The Attorney General argues that H.B. 1126 does not regulate speech, but non-expressive conduct, which the State may regulate if it has a rational basis for doing so. *See* Resp. [26] at 11-12 (citing *City of Dallas v. Stanglin*, 490 U.S. 19, 23-25 (1989)). But the Court is not persuaded that H.B. 1126 merely regulates non-expressive conduct, and *Stanglin*, upon which the Attorney General relies, is distinguishable. *See id.* In *Stanglin*, the "city of Dallas adopted an ordinance restricting admission to certain dance halls to persons between the ages of 14 and

18," *Stanglin*, 490 U.S. at 20, and limiting their operating hours to 1 p.m. to midnight when school was not in session, *id.* at 22. "[T]he owner of one of these 'teenage' dance halls, sued to contest the constitutional validity of the ordinance." *Id.* at 20. "The Texas Court of Appeals held that the ordinance violated the First Amendment right of persons between the ages of 14 and 18 to associate with persons outside that age group." *Id.* at 20-21.

The United States Supreme Court reversed. *Id.* at 21. It reasoned that the ordinance restricted attendance at teenage dance halls "to minors between the ages of 14 and 18 and certain excepted adults. It thus limits the minors' ability to dance with adults who may not attend, and it limits the opportunity of such adults to dance with minors." *Id.* at 24. The Supreme Court recognized that these opportunities for dance-hall patrons "might be described as 'associational' in common parlance, but they simply [did] not involve the sort of expressive association that the First Amendment has been held to protect." *Id.* at 24. "There [was] no suggestion that these patrons '[took] positions on public questions' or perform[ed] any of the other similar activities described in *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 548, 107 S.Ct. 1940, 1947, 95 L.Ed.2d 474 (1987)," *id.* at 25, which includes the "right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends," *Duarte*, 481 U.S. at 548.

This case is distinguishable, as there is competent evidence in the record that NetChoice's members' websites consist of users who take positions on and engage

with others in pursuit of the type of "political, social, economic, educational, religious, and cultural" activities described in *Duarte*. *Id.*; *see also, e.g.,* Ex. [3-2] at 2 ("NetChoice members' websites are full of a wide range of valuable expression and communities. Whether it is to practice their religious beliefs, engage in political discourse, seek cross-cultural dialogue, supplement their education, or learn new skills, people across the nation and world (minors and adults alike) use these websites every day to explore protected speech."). The Attorney General's argument that the Act is conduct-based or that *Stanglin* somehow controls is not persuasive. Because H.B. 1126 regulates content, strict scrutiny applies. *See Reed*, 576 U.S. at 163-64.

2. Whether the Act is likely to fail strict scrutiny

Because the Court concludes that NetChoice is likely to succeed on its argument that the Act imposes content-based restrictions on speech, it next considers whether NetChoice has shown that the Act is likely to fail strict scrutiny. Courts "generally review content-based regulations of speech under strict scrutiny unless they come within an exception such as the commercial speech exceptions of *Zauderer* or *Central Hudson*," *R.J. Reynolds Tobacco Co. v. Food & Drug Admin.*, 96 F.4th 863, 876 (5th Cir. 2024),[5] but those exceptions are not relevant here.

Strict scrutiny "requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest."

[5] *See also Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio,* 471 U.S. 626 (1985); *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980).

Reed, 576 U.S. at 171 (quotation omitted). Thus, it is Defendant's burden to demonstrate that the Act's differentiation among digital service providers and the content they convey, along with the age and parental-consent requirements, further a compelling governmental interest and are narrowly tailored to that end. *Id.*

To show a compelling interest, "[t]he State must specifically identify an actual problem in need of solving, and the curtailment of free speech must be actually necessary to the solution. That is a demanding standard." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 799 (2011) (quotations and citations omitted). According to the Supreme Court, "[i]t is rare that a regulation restricting speech because of its content will ever be permissible." *Id.* (quotation omitted).

The Attorney General contends that "the State has a compelling interest in protecting minors from the predatory behavior that is commonplace on the interactive social-media platforms that the Act covers," and that "[t]he interest in 'safeguarding the physical and psychological wellbeing of a minor' is manifest and well-settled." Resp. [26] at 20 (quoting *Maryland v. Craig*, 497 U.S. 836, 852-53 (1990) (internal quotation omitted)). She maintains that "the Act is narrowly tailored to protect minors from the harms inflicted by online predators," as its "age-verification and parental-consent provisions achieve compelling interests in a narrowly tailored way." *Id.* at 21.

NetChoice replies that, while protecting children from online predatory harm is a "worthy goal" which its own members already do much to advance, "the Act is not remotely tailored to that interest and certainly is not 'the least restrictive

means' of doing so." Reply [27] at 8 (quoting *Americans for Prosperity Found.*, 594 U.S. at 607). NetChoice faults the Attorney General for dismissing private alternatives, even if not perfect, and argues that "[r]egardless, the entire Act is vastly overinclusive as to this interest." *Id.* at 8-9.

The Court accepts as true the Attorney General's position that safeguarding the physical and psychological wellbeing of minors online is a compelling interest. *See* Resp. [26] at 20; *see also, e.g., Sable Commc'ns of California, Inc. v. F.C.C.*, 492 U.S. 115, 126 (1989) (recognizing that "there is a compelling interest in protecting the physical and psychological well-being of minors"). "The Government may serve this legitimate interest, but to withstand constitutional scrutiny, it must do so by narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms." *Sable Commc'ns of California, Inc.*, 492 U.S. at 126 (quotation omitted). "It is not enough to show that the Government's ends are compelling; the means must be carefully tailored to achieve those ends." *Id.* Here, Plaintiff has carried its burden of showing that the Act is likely not narrowly tailored to achieve the interests identified by the Attorney General.

The Southern District of Ohio recently addressed a similar law and found that NetChoice had shown a likelihood of success on the merits of its claim that foreclosing minors under eighteen years old from accessing all content on websites, like the ones H.B. 1126 purports to cover, absent affirmative parental consent was overbroad and therefore unconstitutional. *Yost*, 2024 WL 555904, at *12. The

district court there determined that such an approach also was "an untargeted one, as parents must only give one-time approval for the creation of an account . . . ." *Id.*

In addressing legislation prohibiting minors from purchasing violent video games, the Supreme Court in *Brown* held that is doubtful that "punishing third parties for conveying protected speech to children just in case their parents disapprove of that speech is a proper governmental means of aiding parental authority." *Brown*, 564 U.S. at 802. In *Brown,* as here, there were already a series of preexisting protections to help parents. *Id*. at 803; *see also, e.g.,* Ex. [3-2] at 6 (averring that "there is much publicly accessible information about the many wireless routers that offer parental control settings that parents can use to block specific online services, allow only the specific online services that a parent specifies, limit the time that their children spend on the Internet, set individualized content filters, and monitor the online services that their children visit"). The Supreme Court concluded that the legislation at issue in *Brown* was "seriously underinclusive," not only because it excluded portrayals of violence other than video games, but also because it permitted a parental veto. *Brown*, 564 U.S. at 805. It further held the legislation was also overinclusive because it enforced a governmental speech restriction, subject to parental veto. *Id*. at 804. "And the overbreadth in achieving one goal [was] not cured by the underbreadth in achieving the other." *Id*. at 805.

Here, the Attorney General has not shown that the alternative suggested by NetChoice, a regime of providing parents additional information or mechanisms needed to engage in active supervision over children's internet access, *see* Mem. [4] at 28, would be insufficient to secure the State's objective of protecting children, *see, e.g., Brown*, 564 U.S. at 804-05; *see also United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000) (for content-based regulations subject to strict scrutiny, "[i]f a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative"); Ex. [3-2] at 7 ("Some NetChoice members have developed their own tools that allow parents to set further restrictions on their minor children's use of the websites. For example, Meta has developed its 'Family Center,' which provides for parental supervision on Instagram.").

NetChoice has carried its burden of showing that there are a number of supervisory technologies available for parents to monitor their children that the State could publicize. *See* Mem. [4] at 28; Ex. [3-2] at 6. Yet, the Act requires all users (both adults and minors) to verify their ages before creating an account to access a broad range of protected speech on a broad range of covered websites. This burdens adults' First Amendment rights, and that alone makes it overinclusive.[6] But NetChoice has also presented evidence that "[u]ncertainty about how broadly the Act extends—and how Defendant will interpret the Act—

[6] Minors also have a "significant measure of First Amendment protection," and the State may bar public dissemination of protected materials to minors "only in relatively narrow and well-defined circumstances." *Erznoznik*, 422 U.S. at 212-13. The State does not have a "free-floating power to restrict the ideas to which children may be exposed." *Brown*, 564 U.S. at 794.

may spur members to engage in over-inclusive moderation that would block valuable content from all users," and that not all covered websites have the ability to "age-gate," meaning that "they are unable to separate the content available on adults' accounts from content available on minors' accounts." Ex. [3-2] at 23. This also renders H.B. 1126 overinclusive.

The Act also requires all minors under the age of eighteen, regardless of age and level of maturity, to secure parental consent to engage in protected speech activities on a broad range of covered websites, which represents a one-size-fits-all approach to all children from birth to 17 years and 364-days old. H.B. 1126 is thus overinclusive to the extent it is intended as an aid to parental authority beyond the resources for monitoring children's internet use that NetChoice has identified, because not all children forbidden by the Act to create accounts on their own have parents who will care whether they create such accounts. *See Brown*, 564 U.S. at 789, 804 (holding the state act purporting to aid parental authority by prohibiting the sale or rental of "violent video games" to minors "vastly overinclusive" because "[n]ot all of the children who are forbidden to purchase violent video games on their own have parents who *care* whether they purchase violent video games" (emphasis in original)).

Next, H.B. 1126 is underinclusive because it permits a child to create an account with certain websites, but not others. For example, if the digital service "[*p*]*rimarily* functions to provide a user with access to news, sports, commerce, online video games or content primarily generated or selected by the digital service

provider," and it "[a]llows chat, comment or other interactive functionality that is *incidental* to the digital service," a minor may create an account without age verification or parental consent (because the Act simply does not apply). Sec. 3(2)(c) (emphasis added). "Underinclusiveness raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Brown*, 564 U.S. at 802.

In *Brown,* the Supreme Court found another reason the statute there was underinclusive, stating that:

> The Act is also seriously underinclusive in another respect . . . leav[ing] this dangerous, mind-altering material in the hands of children so long as one parent (or even an aunt or uncle) says it's OK. And there are not even any requirements as to how this parental or avuncular relationship is to be verified; apparently the child's or putative parent's, aunt's, or uncle's say-so suffices.

Id.

H.B. 1126 similarly requires only one parent or guardian's consent, and it does not explain how the parent or guardian relationship is to be confirmed. Section 4(2) states that "[a]cceptable methods of obtaining express consent of a parent or guardian include any of the following" and references examples in subsections (a) through (f). *See* Sec. 4(2) ("A digital service provider shall not permit an account holder who is a known minor to be an account holder unless the known minor has the express consent from a parent or guardian."). Only options (d) and (e) mention confirming or verifying the identity of the purported parent or guardian, but none of the options, not even options (d) and (e), require verifying that the person who is representing himself as the minor's parent or guardian is in fact

the parent or guardian of the minor. *See* Sec. 4(2)(d)-(e) (discussing collecting information and confirming the identity of the parent or guardian, but not how to verify parental relationship or guardian status). This makes H.B. 1126 underinclusive. *See Brown*, 564 U.S. at 802.

The Act is also underinclusive based upon the definition of digital service providers. In support of her argument that the Act is narrowly tailored to advance the State's compelling interest, the Attorney General argues that "interactive social-media platforms that the Act covers . . . host predators who target minors and sexually exploit them, extort them, sell drugs to them, and more," citing the Surgeon General's Advisory on Social Media and Youth Mental Health as well as CyberTipline 2023 Report. Resp. [26] at 20. If the State believes that access to the platforms identified in those reports should be restricted to achieve its compelling interest of protecting children from predators online, then it appears that the Act is underinclusive because at least some of the "electronic service providers" ("ESPs") identified in the CyberTipline 2023 Report cited by the Attorney General were companies that are arguably excluded from the definition of a covered digital service provider under H.B. 1126. For example, according to the "2023 CyberTipline Reports by Electronic Service Providers," the public and ESPs reported numerous instances of suspected child sexual exploitation on Amazon and Roblox, which Plaintiff cited at the hearing as websites that are carved out of H.B. 1126. *See* CyberTipline 2023 Report, https://www.missingkids.org/cybertiplinedata (last accessed June 28, 2024) (linking to 2023 CyberTipline Reports by ESPs,

https://www.missingkids.org/content/dam/missingkids/pdfs/2023-reports-by-esp.pdf); CyberTipline Reports by ESPs, https://www.missingkids.org/content/dam/missingkids/pdfs/2023-reports-by-esp.pdf (last accessed June 28, 2024) (stating that Amazon had 197 reports, Amazon Photos had 25,497 reports, and Roblox had 13,316 reports). By carving such websites, which have experienced instances of alleged child sexual exploitation, out from the Act, H.B. 1126 is underinclusive in pursuing the stated compelling interest.

Finally, Section 6 of H.B. 1126 requires covered digital service providers "to develop and implement a strategy to prevent or mitigate the known minor's exposure to harmful material and other content that promotes or facilitates" certain harms to minors, Sec. 6(1), but then states that it shall not be construed to require a provider to prevent or preclude "[a]ny minor from deliberately and independently searching for, or specifically requesting, content," Sec. 6(2)(a). Permitting minors who have presumably obtained parental consent to view otherwise-prohibited content simply because they initiated it by "searching for" or "requesting" it would not serve the State's compelling interest in protecting minors from the predatory behavior online. H.B. 1126 is underinclusive in this respect as well.

In summary, NetChoice has demonstrated a substantial likelihood of success on its claim that H.B. 1126 is either overinclusive or underinclusive, or both, for achieving the asserted governmental interest – protecting minors from predatory behavior online – and that a substantial number, if not all, of H.B. 1126's applications are unconstitutional judged in relation to its legitimate sweep. *See*

Americans for Prosperity Found., 594 U.S. at 615; *Moody,* 2024 WL 3237685, at *8. As such, it likely is not sufficiently narrowly tailored to survive strict scrutiny.

3. Due Process claim

Alternatively, NetChoice argues that the Act is void for vagueness under the First and Fourteenth Amendments. *See* Compl. [1] at 23-24 (Count II); *id.* 33-34 (Count VI). Specifically, it contends that the central coverage definition of "digital service provider," *id.* at 23-24, and the so-called monitoring-and-censorship requirements in Section 6, *see id.* at 33-34, are unconstitutionally vague and violate principles of free speech and due process, *id.*

"A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.

Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972) (quotations and footnotes omitted).

In sum, "[a] law is unconstitutionally vague if it (1) fails to provide those targeted by the statute a reasonable opportunity to know what conduct is prohibited, or (2) is so indefinite that it allows arbitrary and discriminatory enforcement." *McClelland v. Katy Indep. Sch. Dist.*, 63 F.4th 996, 1013 (5th Cir.), *cert. denied*, 144 S. Ct. 348 (2023), *reh'g denied*, 144 S. Ct. 629 (2024) (quotation omitted). "A regulation is void for vagueness when it is so unclear that people 'of common intelligence must necessarily guess at its meaning and differ as to its application.'" *Id.* (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)).

The Supreme Court has stated that "[t]hese standards should not, of course, be mechanically applied. The degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement—depends in part on the nature of the enactment." *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498 (1982). For example, the Supreme Court has "expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe." *Id.* at 498-99; *see also United States v. Rafoi*, 60 F.4th 982, 996 (5th Cir. 2023) (holding that the vagueness doctrine requires that statutes define a criminal offense "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement").

> [P]erhaps the most important factor affecting the clarity that the Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally protected rights. If, for example, the law interferes with the right of free speech or of association, a more stringent vagueness test should apply.

Vill. of Hoffman Ests., 455 U.S. at 499. Such is the case here.

NetChoice has shown that at least one core part of the Act is vague and deprives it of a constitutionally-protected liberty interest, making it impermissibly vague in all of its applications. *See McClelland*, 63 F.4th at 1013 (holding that "a facial challenge may only be sustained "if the enactment is impermissibly vague in all of its applications," and that "[s]ince a void-for-vagueness challenge is ultimately a due-process claim, a plaintiff must allege that he was deprived of a constitutionally-protected property or liberty interest" (quotation and footnote omitted)). Specifically, H.B. 1126 purports to define a "digital service provider" as one that owns or operates a digital service, which is defined as a "website, an application, a program, or software that collects or processes personal identifying information with Internet connectivity," Sec. 2(a), subject to some additional limitations, Sec. 2(b).

> But the Act does not apply to certain things, including:
>
> [a] digital service provider's provision of a digital service that:
> (i) *Primarily functions* to provide a user with access to news, sports, commerce, online video games or content primarily generated or selected by the digital service provider; and
> (ii) Allows chat, comment or other interactive functionality that is *incidental* to the digital service . . . .

Sec. 2(c) (emphasis added).

First, it is unclear what test one uses to determine how a digital service "primarily" functions. *See id.* Nor does the Act provide any guidance as to when a website permits chat, comment, or other interactive functionality that is merely "incidental" to its purpose, as opposed to being a primary or integral function. *See id.* NetChoice has carried its preliminary burden at this stage of the case of demonstrating that this definition is overly indefinite, leaving it open for potential arbitrary and discriminatory enforcement. *See id.*; *McClelland*, 63 F.4th at 1013.

In addition, H.B. 1126 only applies to a digital service provider who provides a digital service that "[c]onnects users in a manner that allows users to *socially interact* with other users on the digital service." Sec. 3(1)(a) (emphasis added). But it does not explicate what constitutes "social" interaction on a digital service, as opposed to other interactions between users on websites. *See id.* Websites are thus left to guess as to whether the Act applies at all to them, and NetChoice has shown that the coverage definition is so indefinite that it presents a concern over potential arbitrary and discriminatory enforcement. *See McClelland*, 63 F.4th at 1013. Because the Court finds that H.B. 1126 is vague in its coverage definition, the Court need not reach the other terms Plaintiff claims are vague.

In sum, NetChoice has demonstrated a substantial likelihood of success on the merits of its claim that some of H.B. 1126's terms are unconstitutionally vague.

C. Irreparability of harm

This Court next turns to whether NetChoice's members or its members' users will suffer irreparable harm absent an injunction. "In general, a harm is

irreparable where there is no adequate remedy at law, such as monetary damages." *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011). But the mere fact that monetary damages may be available does not always mean that a remedy is adequate. *See id.*

"When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Book People, Inc. v. Wong*, 91 F.4th 318, 340-41 (5th Cir. 2024) (quotation omitted). The Supreme Court has held that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Here, the potential penalty for knowingly violating the Act includes criminal liability, *see* Sec. 8(2)(q) (making violating the Act an unfair and deceptive trade practice under Section 75-24-5); Miss. Code Ann. § 75-24-20(a) ("Any person who, knowingly and willfully, violates any provision of Section 75-24-5, shall be guilty of a misdemeanor, and upon conviction shall be fined up to One Thousand Dollars ($1,000.00)."), and with respect to compliance costs, covered digital service providers are at risk of irreparable harm by outlaying financial resources to comply "with no guarantee of eventual recovery" from the State if the Court ultimately enters judgment in their favor, *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 765 (2021). Indeed, at least one of NetChoice's members has presented evidence that the alleged financial injury may threaten the very existence of its business. *See* Ex. [3-5] at 22 (averring that "the Act threatens [Dreamwidth's] ability to continue operating"). The Fifth

Circuit has found an injury to be irreparable when compliance costs were likely unrecoverable against a federal agency because it enjoyed sovereign immunity. *See Wages & White Lion Invs., L.L.C. v. United States Food & Drug Admin.*, 16 F.4th 1130, 1142 (5th Cir. 2021). The Court finds this factor weighs in favor of granting a preliminary injunction.

D. Balance of equities and the public interest

The last two factors merge when the government is the opposing party. *Nken*, 556 U.S. at 435. "[I]njunctions protecting First Amendment freedoms are always in the public interest." *Texans for Free Enter. v. Texas Ethics Comm'n*, 732 F.3d 535, 539 (5th Cir. 2013). Because the Court has found that NetChoice has shown a substantial likelihood of success on the merits of its claims, the Court finds that an injunction is in the public interest. *See id.*; *see also, e.g., Book People, Inc.*, 91 F.4th at 341 ("Because Plaintiffs are likely to succeed on the merits of their First Amendment claim, the State and the public won't be injured by an injunction of a statute that likely violates the First Amendment."). Based upon the record, NetChoice has shown that all four Rule 65 factors favor a preliminary injunction. NetChoice's Motion [3] should be granted to the extent it seeks a preliminary injunction.

E. Whether the Court should require security

Rule 65(c) states that a court may issue a preliminary injunction "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or

restrained." Fed. R. Civ. P. 65(c). "[T]he amount of security required pursuant to Rule 65(c) is a matter for the discretion of the trial court," and the district court "may elect to require no security at all." *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996).

In this case, neither party has raised the issue of security, and Defendant likely will not incur any significant monetary damage as a result of a preliminary injunction, which ensures that Plaintiff's constitutional rights are protected. Therefore, the Court finds that security is not necessary in this case. *See id.* Other courts have reached the same conclusion under similar circumstances. *See, e.g., Thomas v. Varnado*, 511 F. Supp. 3d 761, 766 (E.D. La. 2020) (holding that, because neither the school board or superintendent was likely to incur any significant monetary damages as a result of the preliminary injunction and because the plaintiff was a minor student, it would issue an injunction without security); *Gbalazeh v. City of Dallas*, No. 3:18-CV-0076-N, 2019 WL 2616668, at *2 (N.D. Tex. June 25, 2019) ("The Court exercises its discretion under Federal Rule of Civil Procedure 65(c) to waive the bond requirement, as Plaintiffs are engaged in 'public-interest litigation' to protect their constitutional rights." (quoting *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084 (5th Cir. 1981)).[7]

[7] Because Plaintiff has shown a likelihood of success on the merits on at least some of its claims, the Court need not consider Plaintiff's remaining preemption claim. *See* Compl. [1] at 35-36.

III. CONCLUSION

It is not lost on the Court the seriousness of the issue the legislature was attempting to address, nor does the Court doubt the good intentions behind the enactment of H.B. 1126. But as the Supreme Court has held, "[a] law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive . . . ." *Reed*, 576 U.S. at 165. That is a high bar, which at this preliminary stage of the proceedings, Plaintiff has shown the Act likely does not meet.

In sum, because the Court finds that Plaintiff NetChoice, LLC has carried its burden of showing a substantial likelihood of success on the merits of its claim that the Act is unconstitutional under a First Amendment facial challenge and, alternatively, a Fourteenth Amendment vagueness challenge, it will grant the Motion for a Preliminary Injunction without requiring security.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Plaintiff NetChoice, LLC's Motion [3] for Preliminary Injunction and Temporary Restraining Order is **GRANTED IN PART**, to the extent it seeks an unsecured preliminary injunction, **and DENIED IN PART** as moot, to the extent it seeks a temporary restraining order.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Defendant Mississippi Attorney General Lynn Fitch, and her agents, employees, and all persons acting under her direction or control, are **PRELIMINARILY ENJOINED** under Federal Rule of Civil Procedure 65(a) from enforcing Mississippi House Bill

1126 against Plaintiff NetChoice, LLC and its members, pending final disposition of the issues in this case on their merits.

SO ORDERED AND ADJUDGED, this the 1st day of July, 2024.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE

Appendix 6

U.S.C.A. Const. Amend. I

Amendment I. Establishment of Religion; Free Exercise of Religion; Freedom of Speech and the Press; Peaceful Assembly; Petition for Redress of Grievances

Currentness

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const Amend. I--Establishment clause; Free Exercise clause>

<USCA Const Amend. I--Free Speech clause; Free Press clause>

<USCA Const Amend. I--Assembly clause; Petition clause>

U.S.C.A. Const. Amend. I, USCA CONST Amend. I
Current through P.L. 119-18. Some statute sections may be more current, see credits for details.

Appendix 7

MISSISSIPPI LEGISLATURE REGULAR SESSION 2024

By: Representatives Ford (73rd), Nelson, Byrd

To: Technology; Judiciary B

HOUSE BILL NO. 1126
(As Sent to Governor)

AN ACT TO CREATE THE "WALKER MONTGOMERY PROTECTING CHILDREN ONLINE ACT" FOR THE PURPOSE OF PROTECTING MINOR CHILDREN FROM ONLINE HARMFUL MATERIAL AND ACCESS TO SUCH MATERIAL; TO REQUIRE DIGITAL SERVICE USERS TO REGISTER THEIR AGE; TO LIMIT THE COLLECTION AND USE OF MINOR USERS' PERSONAL IDENTIFYING INFORMATION; TO REQUIRE DIGITAL SERVICES PROVIDERS TO DEVELOP AND IMPLEMENT A STRATEGY TO PREVENT OR MITIGATE CERTAIN HARMS TO MINORS; TO AMEND SECTION 75-24-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A VIOLATION OF THIS ACT IS AN UNFAIR AND DECEPTIVE TRADE PRACTICE THAT IS ENFORCEABLE BY THE OFFICE OF THE ATTORNEY GENERAL; TO AMEND SECTION 97-5-31, MISSISSIPPI CODE OF 1972, TO INCLUDE MORPHED IMAGES OF DEPICTING MINOR CHILDREN IN EXPLICIT NATURE IN THE CRIME OF CHILD EXPLOITATION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act shall be known and may be cited as the "Walker Montgomery Protecting Children Online Act."

SECTION 2. For purposes of this act, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Digital service" means a website, an application, a program, or software that collects or processes personal identifying information with Internet connectivity.

(b) "Digital service provider" means a person who:

(i) Owns or operates a digital service;

(ii) Determines the purpose of collecting and processing the personal identifying information of users of the digital service; and

(iii) Determines the means used to collect and process the personal identifying information of users of the digital service.

(c) "Harmful material" means material that is harmful to minors as defined by Section 11-77-3(d).

(d) "Known minor" means a child who is younger than eighteen (18) years of age who has not had the disabilities of minority removed for general purposes, and who the digital service provider knows to be a minor.

(e) "Personal identifying information" means any information, including sensitive information, that is linked or reasonably linkable to an identified or identifiable individual. The term includes pseudonymous information when the information is used by a controller or processor in conjunction with additional information that reasonably links the information to an identified or identifiable individual. The term does not include deidentified information or publicly available information.

SECTION 3. (1) This act applies only to a digital service provider who provides a digital service that:

(a) Connects users in a manner that allows users to socially interact with other users on the digital service;

(b) Allows a user to create a public, semi-public or private profile for purposes of signing into and using the digital service; and

(c) Allows a user to create or post content that can be viewed by other users of the digital service, including sharing content on:

(i) A message board;

(ii) A chat room; or

(iii) A landing page, video channel or main feed that presents to a user content created and posted by other users.

(2) This act does not apply to:

(a) A digital service provider who processes or maintains user data in connection with the employment, promotion, reassignment or retention of the user as an employee or independent contractor, to the extent that the user's data is processed or maintained for that purpose;

(b) A digital service provider's provision of a digital service that facilitates e-mail or direct messaging services, if the digital service facilitates only those services;

(c) A digital service provider's provision of a digital service that:

(i) Primarily functions to provide a user with access to news, sports, commerce, online video games or content primarily generated or selected by the digital service provider; and

(ii) Allows chat, comment or other interactive functionality that is incidental to the digital service; or

(d) A digital service provider's provision of a digital service that primarily functions to provide a user with access to career development opportunities, including:

(i) Professional networking;

(ii) Job skills;

(iii) Learning certifications;

(iv) Job posting; and

(v) Application services.

(3) The Internet service provider, Internet service provider's affiliate or subsidiary, search engine or cloud service provider is not considered to be a digital service provider or to offer a digital service if the Internet service provider or provider's affiliate or subsidiary, search engine or cloud service provider solely provides access or connection, including through transmission, download, intermediate storage, access software or other service, to an Internet website or to other information or content:

(a) On the Internet; or

(b) On a facility, system or network not under the control of the Internet service provider, provider's affiliate or subsidiary, search engine or cloud service provider.

SECTION 4. (1) A digital service provider may not enter into an agreement with a person to create an account with a

digital service unless the person has registered the person's age with the digital service provider. A digital service provider shall make commercially reasonable efforts to verify the age of the person creating an account with a level of certainty appropriate to the risks that arise from the information management practices of the digital service provider.

(2) A digital service provider shall not permit an account holder who is a known minor to be an account holder unless the known minor has the express consent from a parent or guardian. Acceptable methods of obtaining express consent of a parent or guardian include any of the following:

(a) Providing a form for the minor's parent or guardian to sign and return to the digital service provider by common carrier, facsimile, or electronic scan;

(b) Providing a toll-free telephone number for the known minor's parent or guardian to call to consent;

(c) Coordinating a call with a known minor's parent or guardian over video conferencing technology;

(d) Collecting information related to the government-issued identification of the known minor's parent or guardian and deleting that information after confirming the identity of the known minor's parent or guardian;

(e) Allowing the known minor's parent or guardian to provide consent by responding to an email and taking additional

steps to verify the identity of the known minor's parent or guardian; or

(f) Any other commercially reasonable method of obtaining consent in light of available technology.

SECTION 5. (1) A digital service provider that enters into an agreement with a known minor for access to a digital service shall:

(a) Limit collection of the known minor's personal identifying information to information reasonably necessary to provide the digital service; and

(b) Limit use of the known minor's personal identifying information to the purpose for which the information was collected.

(2) A digital service provider that enters into an agreement with a known minor for access to a digital service may not:

(a) Use the digital service to collect the known minor's precise geolocation data;

(b) Use the digital service to display targeted advertising involving harmful material to the known minor; or

(c) Share, disclose or sell the known minor's personal identifying information unless required to:

(i) Comply with a civil, criminal or regulatory inquiry, investigation, subpoena or summons by a governmental entity;

(ii) Comply with a law enforcement investigation;

(iii) Detect, block or prevent the distribution of unlawful, obscene or other harmful material to a known minor;

(iv) Block or filter spam;

(v) Prevent criminal activity; or

(vi) Protect the security of a digital service.

SECTION 6. (1) In relation to a known minor's use of a digital service, a digital service provider shall make commercially reasonable efforts to develop and implement a strategy to prevent or mitigate the known minor's exposure to harmful material and other content that promotes or facilitates the following harms to minors:

(a) Consistent with evidence-informed medical information, the following: self-harm, eating disorders, substance use disorders, and suicidal behaviors;

(b) Patterns of use that indicate or encourage substance abuse or use of illegal drugs;

(c) Stalking, physical violence, online bullying, or harassment;

(d) Grooming, trafficking, child pornography, or other sexual exploitation or abuse;

(e) Incitement of violence; or

(f) Any other illegal activity.

(2) Nothing in subsection (1) shall be construed to require a digital service provider to prevent or preclude:

(a) Any minor from deliberately and independently searching for, or specifically requesting, content; or

(b) The digital service provider or individuals on the digital service from providing resources for the prevention or mitigation of the harms described in subsection (1), including evidence-informed information and clinical resources.

SECTION 7. (1) Except as provided by subsection (2) of this section, this act may not be construed as providing a basis for, or being subject to, a private right of action for a violation of this act.

(2) If a digital service provider violates this act, the parent or guardian of a known minor affected by that violation may bring a cause of action seeking:

(a) A declaratory judgment under Rule 57 of Mississippi Rules of Civil Procedure; or

(b) An injunction against the digital service provider.

(3) A court may not certify an action brought under this section as a class action.

SECTION 8. Section 75-24-5, Mississippi Code of 1972, is amended as follows:

75-24-5. (1) Unfair methods of competition affecting commerce and unfair or deceptive trade practices in or affecting commerce are prohibited. Action may be brought under Section 75-24-5(1) only under the provisions of Section 75-24-9.

(2) Without limiting the scope of subsection (1) of this section, the following unfair methods of competition and unfair or deceptive trade practices or acts in the conduct of any trade or commerce are hereby prohibited:

(a) Passing off goods or services as those of another;

(b) Misrepresentation of the source, sponsorship, approval, or certification of goods or services;

(c) Misrepresentation of affiliation, connection, or association with, or certification by another;

(d) Misrepresentation of designations of geographic origin in connection with goods or services;

(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

(f) Representing that goods are original or new if they are reconditioned, reclaimed, used, or secondhand;

(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(h) Disparaging the goods, services, or business of another by false or misleading representation of fact;

(i) Advertising goods or services with intent not to sell them as advertised;

(j) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(k) Misrepresentations of fact concerning the reasons for, existence of, or amounts of price reductions;

(l) Advertising by or on behalf of any licensed or regulated health care professional which does not specifically describe the license or qualifications of the licensed or regulated health care professional;

(m) Charging an increased premium for reinstating a motor vehicle insurance policy that was cancelled or suspended by the insured solely for the reason that he was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve. It is also an unfair practice for an insurer to charge an increased premium for a new motor vehicle insurance policy if the applicant for coverage or his covered dependents were previously insured with a different insurer and canceled that policy solely for the reason that he was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve. For purposes of determining premiums, an insurer shall consider such persons as having maintained continuous coverage. The provisions of this paragraph (m) shall apply only to such

instances when the insured does not drive the vehicle during the period of cancellation or suspension of his policy;

(n) Violating the provisions of Section 75-24-8; * * *

(o) Violating the provisions of Section 73-3-38 * * *;

(p) Violating any of the provisions of Sections 1 through 6 of House Bill No. 728, 2024 Regular Session, as approved by the Governor; and

(q) Violating any of the provisions of Sections 1 through 7 of this act.

SECTION 9. Section 97-5-31, Mississippi Code of 1972, is amended as follows:

97-5-31. As used in Sections 97-5-33 through 97-5-37, the following words and phrases shall have the meanings given to them in this section:

(a) "Child" means any individual who has not attained the age of eighteen (18) years and is an identifiable child.

(b) "Sexually explicit conduct" means actual, morphed or simulated:

(i) Oral genital contact, oral anal contact, or sexual intercourse as defined in Section 97-3-65, whether between persons of the same or opposite sex;

(ii) Bestiality;

(iii) Masturbation;

(iv) Sadistic or masochistic abuse;

(v) Lascivious exhibition of the genitals or pubic area of any person; or

(vi) Fondling or other erotic touching of the genitals, pubic area, buttocks, anus or breast.

(c) "Producing" means producing, directing, manufacturing, issuing, publishing, morphing or advertising.

(d) "Visual depiction" includes, without limitation, developed or undeveloped film and video tape or other visual unaltered, altered or morphed reproductions by computer and technology.

(e) "Computer" has the meaning given in Title 18, United States Code, Section 1030.

(f) "Morphed image" means any visual depiction or representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, simulated or other means, of sexually explicit conduct, where such visual depiction or representation has been created, adapted, or modified to appear an identifiable minor is engaging in sexual conduct or sexually explicit activity to appearing in a state of sexually explicit nudity.

(* * *g) "Simulated" means any depicting of the genitals or rectal areas that gives the appearance of sexual conduct or incipient sexual conduct.

(h) "Identifiable child" means a child who was a minor at the time the image was created, adapted, or modified or whose image as a child was used in the creating, adapting or modifying of the image; and is recognizable as an actual child by the child's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature. The provisions of this paragraph (h) shall not be construed to require proof of the actual identity of the identifiable child.

SECTION 10. This act shall take effect and be in force from and after July 1, 2024.

Appendix 8

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI SOUTHERN DIVISION

NETCHOICE, LLC, *Plaintiff*, v. LYNN FITCH, in her official capacity as Attorney General of Mississippi, *Defendant*.	Civil Action No. 1:24-CV-00170-HSO-BWR

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NetChoice brings this civil action against Defendant for declaratory and injunctive relief and alleges as follows:

INTRODUCTION

1. As this Court has correctly concluded, ECF 30, Mississippi is attempting to unconstitutionally regulate minors' access to online speech—and impair adults' access along the way. Mississippi House Bill 1126 (2024) (the "Act") restricts protected speech for minors, adults, and websites, violating bedrock principles of constitutional law and precedent from courts across the Nation.[1] As the U.S. Supreme Court has repeatedly held, "minors are entitled to a significant measure of First Amendment protection." *See Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 794 (2011) (cleaned up; quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 212-13 (1975)). And the government may not impede adults' access to speech in its effort to regulate what it deems acceptable protected speech for minors. *Ashcroft v. ACLU*, 542 U.S. 656, 667 (2004); *Reno v. ACLU*, 521 U.S. 844, 882 (1997). That is why courts nationwide have enjoined state laws that similarly would restrict minors' and adults' access to lawful online speech. *NetChoice, LLC v. Yost*, 2025 WL 1137485 (S.D.

[1] This Complaint refers to websites, applications, and other digital services as "websites."

Ohio Apr. 16, 2025) (permanently enjoining parental-consent law); *NetChoice, LLC v. Griffin*, 2025 WL 978607 (W.D. Ark. Mar. 31, 2025) ("*Griffin II*") (permanently enjoining age-verification and parental-consent law); *NetChoice, LLC v. Bonta*, 2025 WL 807961 (N.D. Cal. Mar. 13, 2025) (enjoining broad regulation of online services, including age-estimation requirement); *Comput. & Commc'n Indus. Ass'n v. Paxton*, 747 F. Supp. 3d 1011 (W.D. Tex. 2024) ("*CCIA*") (enjoining law requiring filtering and monitoring of certain content-based categories of speech on minors' accounts); *NetChoice, LLC v. Reyes*, 748 F. Supp. 3d 1105 (D. Utah 2024) (preliminarily enjoining age-assurance and parental-consent law).

2. This Court's decision preliminarily enjoining enforcement of the Act was consistent with that consensus. ECF 30.[2] That decision expressly recognized that, under the facial challenge standard that applies "[i]n the First Amendment context, . . . a law may be invalidated as overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." ECF 30 at 18 (quoting *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021), and citing *Moody v. NetChoice, LLC*, 603 U.S. 707, 721-26 (2024)). But the Court's decision—issued on the Act's July 1, 2024, effective date—came just hours after the Supreme Court's decision in *Moody*. "[U]nderstandably," this Court did not have the opportunity to "conduct [the] analysis" articulated by *Moody*. *NetChoice, L.L.C. v. Fitch*, 2025 WL 1135279, at *6 (5th Cir. Apr. 17, 2025). On remand from the Fifth Circuit, therefore, all that remains is for this Court to apply the facial-challenge analysis articulated in *Moody*, which reaffirmed the Court's prior standard for reviewing First Amendment facial challenges but spelled out a two-step process for applying it. First, this Court must "assess the state laws' scope. What activities, by what actors,

[2] This lawsuit challenges only Sections 1-8 of the Act (and it uses the term "Act" to refer only to the challenged provisions).

do the laws prohibit or otherwise regulate?" *Moody*, 603 U.S. at 724. Second, this Court must then "decide which of the laws' applications violate the First Amendment, and to measure them against the rest." *Id.* at 725. Those questions are easily answered on the face of the law.

3. In all events, the Act is unconstitutional as applied to NetChoice members and their services regulated by the Act.

4. NetChoice members and other websites regulated by the Act allow both minors and adults to "engage in a wide array of . . . activity on topics 'as diverse as human thought'"—all "protected by the First Amendment" from government interference. *Griffin II*, 2025 WL 978607, at *3 (quoting *Packingham v. North Carolina*, 582 U.S. 98, 105 (2017)). The Act would fundamentally change all of that. It would place multiple restrictions on minors and adults' ability to access covered websites, block access altogether (in some cases), and directly regulate the protected speech that websites can disseminate.

5. Accordingly, the Act—in whole and in part—is unlawful for multiple reasons.

6. *First*, the Act's requirement that covered websites verify the ages of all Mississippi account holders (both minors and adults), § 4(1),[3] violates the First Amendment. *Griffin II*, 2025 WL 978607, at *13, *17 (permanently enjoining age-verification requirement as "maximally burdensome"); *Reyes*, 748 F. Supp. 3d at 1129 n.169 (similar); *see Bonta*, 2025 WL 807961, at *15 (enjoining age-estimation requirement). This provision mandates that minors and adults alike verify their ages—which may include handing over personal information or identification that many are unwilling or unable to provide—as a precondition to access and engage in protected speech. Such requirements burden and infringe access to protected speech. *See, e.g.*, *Ashcroft*, 542 U.S. at 667, 673; *Reno*, 521 U.S. at 882.

[3] All similar references are references to sections of House Bill 1126. *See* Ex. 1.

7. *Second*, the Act's requirement that a minor obtain parental consent as a prerequisite to creating an account (and thus accessing protected speech) on any covered website, § 4(2), violates the First Amendment. *Brown*, 564 U.S. at 795 & n.3; *Yost*, 2025 WL 1137485, at *24 (permanently enjoining parental-consent requirement to access protected speech); *Griffin II*, 2025 WL 978607 at *13, *17 (same); *see also Reyes*, 748 F. Supp. 3d at 1126 & n.135 (enjoining parental-consent requirement for minors to speak to certain audiences). The Supreme Court has held that governments may not require minors to secure "*their parents' prior consent*" before accessing protected speech. *Brown*, 564 U.S. at 795 n.3 (emphasis in original).

8. *Third*, the Act's vague requirement that covered websites "prevent or mitigate" minors' "exposure" to certain content- and viewpoint-based categories of speech, § 6(1), violates the First Amendment and is preempted by 47 U.S.C. § 230. *CCIA*, 747 F. Supp. 3d at 1036, 1042-43. The Act would replace covered websites' own voluntary and extensive "content moderation" efforts to address objectionable speech with state-mandated censorship. Furthermore, the broad, subjective, and vague categories of speech that the Act requires websites to monitor and censor could reach everything from classic literature, such as *Romeo and Juliet* and *The Bell Jar*, to modern media like pop songs by Taylor Swift. This requirement will chill the dissemination of yet more speech on covered websites. Such overbroad prior restraints of speech violate the First Amendment. Moreover, Congress expressly preempted state laws requiring websites to monitor or block speech—or imposing liability for imperfect content moderation. 47 U.S.C. § 230(c)(1), (e)(3).

9. Each of these provisions independently triggers strict scrutiny under the First Amendment. Moreover, all speech regulations in the Act trigger strict scrutiny because they all depend on the Act's content-based central coverage definition establishing which "digital service provider[s]" are covered by the Act. § 3(1). None of the Act's provisions can satisfy strict scrutiny,

or any level of heightened scrutiny, because they are not appropriately tailored to any substantial or compelling interest.

10. Finally, the Act's central "digital service provider" definition, § 3(1), is unconstitutionally vague, leaving many websites across the Internet uncertain about whether they must shoulder the Act's burdens or face arbitrary and unpredictable enforcement.

11. For these reasons and more, this Court should enjoin Defendant from enforcing the Act, §§ 1-8, and declare the Act unlawful.

PARTIES & STANDING

12. Plaintiff NetChoice, LLC is a District of Columbia nonprofit trade association for Internet companies. NetChoice's mission is to promote online commerce and speech and to increase consumer access and options via the Internet, while also minimizing the burdens that would prevent businesses from making the Internet more accessible and useful. NetChoice's members are listed at NetChoice, About Us, https://tinyurl.com/4jk6kzbe.

13. NetChoice has standing to bring its challenges on at least two grounds.

14. First, NetChoice has associational standing to challenge the Act because: (1) some NetChoice members have individual standing to sue in their own right; (2) challenging the Act is germane to NetChoice's purpose; and (3) members' individual participation is unnecessary in this purely legal challenge. *See Fitch*, 2025 WL 1135279, at *3; *Yost*, 2025 WL 1137485, at *9; *Reyes*, 748 F. Supp. 3d at 1118-19; *CCIA*, 747 F. Supp. 3d at 1030; *NetChoice, LLC v. Griffin*, 2023 WL 5660155, at *9 (Aug. 31, 2023) ("*Griffin I*").

15. Based on the Act's definition of regulated "digital service provider[s]," §§ 2(b), 3, the Act regulates some services offered by the following NetChoice members: (1) Dreamwidth; (2) Meta, which owns and operates Facebook and Instagram; (3) Nextdoor; (4) Pinterest; (5) Reddit; (6) Snap Inc., which owns and operates Snapchat; (7) X; and (8) YouTube. Although the Act

does not regulate all NetChoice members, this Complaint refers to members with services that the Act regulates as "members."

16. Second, NetChoice has standing to assert the First Amendment rights of members' current and prospective users. *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 392-93 (1988); *Fitch*, 2025 WL 1135279, at *3; *Yost*, 2025 WL 1137485, at *9; *CCIA*, 747 F. Supp. 3d at 1029-30; *Griffin I*, 2023 WL 5660155, at *9.[4]

17. Defendant Lynn Fitch is the Mississippi Attorney General. She is a Mississippi resident and is sued in her official capacity. The Act provides that a violation of the Act is an unfair and deceptive trade practice enforceable by the Office of the Attorney General. § 8; *see* Miss. Code §§ 75-24-9, 75-24-19.

JURISDICTION & VENUE

18. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a). This Court has authority to grant legal and equitable relief under 42 U.S.C. § 1983, injunctive relief under 28 U.S.C. § 1651, and declaratory relief under 28 U.S.C. § 2201(a).

19. This Court has personal jurisdiction over Defendant, because she resides in and/or conducts a substantial proportion of her official business in Mississippi. Venue is proper in this District under 28 U.S.C. § 1391(b) because the only Defendant resides in, and the events giving rise to this civil action occurred in, Mississippi.

20. Defendant has not contested personal jurisdiction or venue.

[4] When discussing the Act's requirements, this Complaint uses the terms "minor," "adult," "account holder," and "user" to refer only to minors, adults, account holders, and users who are residents of Mississippi. Likewise, this Complaint generally employs the term "user" to encompass both what the Act refers to as "users" and "account holder[s]." *See* §§ 3, 4(2). Plaintiff and its members reserve the right to argue that their compliance obligations for "users" (under the Act) are different than their compliance obligations for "account holders," and are different from the burdens discussed in this Complaint.

BACKGROUND

21. **NetChoice members' covered websites disseminate, facilitate, and promote speech protected by the First Amendment.** "Social media" websites such as Plaintiff's members' covered services "engage[] in expression" through their "display" and "compil[ing] and curat[ing]" of protected "third-party speech" (text, audio, images, and video) "created by others." *Moody*, 603 U.S. at 716, 728. They "allow[] users"—both minors and adults—"to gain access to information[,] communicate with one another," and "engage in a wide array of protected First Amendment activity." *Packingham*, 582 U.S. at 105, 107.

22. The speech on these websites includes expression at the heart of the First Amendment's protections for art, literature, politics, religion, and "entertain[ment]." *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501 (1952).

23. NetChoice's members allow their users to "gain access to information and communicate with one another about it on any subject that might come to mind. Users employ these websites to engage in a wide array of protected First Amendment activity on topics as diverse as human thought." *Griffin II*, 2025 WL 978607, at *3 (cleaned up; quoting *Packingham*, 582 U.S. at 107); *see Yost*, 2025 WL 1137485, at *2.

24. For example, Dreamwidth allows users to share their writing, artwork, and innermost thoughts. "On Facebook, . . . users can debate religion and politics with their friends and neighbors or share vacation photos." *Packingham*, 582 U.S. at 104. Instagram allows people to post and view photos and videos, comment on them, learn about and advocate for the causes they care about, showcase their art or athletic talent, and hear from their local government officials. On Nextdoor, users can connect with neighbors, share local news, and borrow tools. Pinterest allows users to explore recipes, home decor, and more. On Reddit, users have access to hundreds of thousands of communities, endless conversation, and authentic human connection—with user-created

and led communities on all manner of subjects. Snapchat is designed to allow users to have digital conversations with friends and family in ways that replicate real-life interactions. On X, "users can petition their elected representatives and otherwise engage with them in a direct manner." *Id.* at 104-05. And YouTube endeavors to show people the world, from travel documentaries to step-by-step cooking instructions. All of NetChoice members' covered websites allow users to interact socially.

25. Minors—like adults—use covered websites to engage in speech that is entitled to First Amendment protection from government interference, including: interacting socially with family and friends, raising money for field trips, showcasing their creative and athletic talents, hearing from and talking to local government officials, entertaining and being entertained, and forming new communities.

26. Like many other covered websites, many NetChoice members require users to create an account before they can access some or all of the protected speech and speech-facilitating functionalities available on their websites.

27. **Existing options for parental control and oversight.** Parents have many existing options to regulate whether and how their minor children use the Internet. *See NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1121 (9th Cir. 2024); *Griffin II*, 2025 WL 978607, at *3; *Reyes*, 748 F. Supp. 3d at 1126 n.138.

28. There are resources that collect all of these parental tools in one place. *E.g.*, Internet Matters, Parental Control Guides, https://perma.cc/VNA6-W76A.

29. Parents can decide whether and when to let their minor children use computers, tablets, smartphones, and other devices to access the Internet.

30. Cellular and broadband Internet providers offer families tools to block certain online services on devices using a particular cellular, Wi-Fi, or broadband network (such as that used in the minor's home). *See, e.g.*, Verizon, Verizon Smart Family, https://perma.cc/58AX-N4CH; AT&T, AT&T Secure Family, https://perma.cc/D9YP-DEL4; T-Mobile, Family Controls and Privacy, https://perma.cc/Q6ZZ-RVLZ; Comcast Xfinity, Set Up Parental Controls for the Internet, https://perma.cc/7FL6-8MYE.

31. Internet browsers likewise allow parents to control what online services their children may access. *See, e.g.*, Mozilla, Block and Unblock Websites with Parental Controls on Firefox, https://perma.cc/7RPQ-CTZV. For example, some browsers offer a "kids mode" or enable parents to see what online services their children are accessing the most. *See* Google, Safety Center, https://perma.cc/64XL-BKLY; Microsoft, Learn More About Kids Mode in Microsoft Edge, https://tinyurl.com/mr3avxd8. Parents can also use widely available third-party software and browser extensions to reinforce these tools. *See, e.g.*, Kim Key, *The Best Parental Control Software for 2025*, PCMag (Nov. 15, 2024), https://perma.cc/F9AT-7KCS.

32. Wireless routers often have settings allowing parents to block particular websites, filter content, monitor Internet usage, and control time spent on the Internet. *See, e.g.*, Netgear, Netgear Smart Parental Controls, https://perma.cc/P3PP-GBH5; tp-link, How to Configure Parental Controls on the Wi-Fi Routers (Case 1), https://perma.cc/8DUU-L75W.

33. Device manufacturers provide even more parental controls, allowing parents to limit the time spent on the device, curtail the applications that can be used on the device, filter online content, and control privacy settings. *See* Apple, Use Parental Controls on Your Child's iPhone and iPad, https://perma.cc/9YVV-FZWU; Google Family Link, Help Keep Your Family Safer Online, https://perma.cc/5QDP-WKXR; Microsoft, Getting Started with Microsoft Family

Safety, https://perma.cc/E5ES-YE9H; Samsung, Parental Controls Available on Your Galaxy Phone or Tablet, https://perma.cc/WN3N-HL6S.

34. Numerous third-party applications also allow parents to control and monitor their children's online activities. *See, e.g.*, Alyson Behr, *The Best Parental Control Apps in 2025, Tested By Our Editors*, CNN underscored (Jan. 2, 2025), https://perma.cc/Q3SF-TBNF.

35. In addition, NetChoice members provide parents with tools and options to help monitor their minor children's activities. Facebook offers supervision tools that parents and guardians can use to help support their teens. When supervision is set up on Facebook, a parent can see how much time their teen has spent on the Facebook app each day for the last week and their average daily time spent for the week; set scheduled breaks for their teen; see their teen's Facebook friends; see some of their teen's privacy settings and content preferences; and see the people and Pages their teen has blocked. *See, e.g.*, Meta, Supervision on Facebook, https://perma.cc/E5GS-DZKQ. Similarly, Snapchat's "Family Center" allows parents to see which friends the teen has been recently communicating with on Snapchat, view their list of friends, restrict sensitive content, and report abuse. *See* Snapchat Support, What is Family Center, https://perma.cc/2AUN-CKD6. Instagram currently offers supervision features for teens under 18 that allow parents and guardians to set daily time limits or limit use during select days and hours; set reminders to close the app; see the average amount of time their teen has spent on Instagram over the last week and the total time spent on Instagram for each specific day over the last week; see which accounts their teen is following and which accounts are following their teen, which accounts their teen is currently blocking, and their teen's settings for account privacy, messaging, sensitive content, and who can add them to a group chat. *See, e.g.*, Instagram, Help Center, About Supervision on Instagram, https://tinyurl.com/y3b6suzw. Instagram recently announced that minors under 18 will

automatically be placed into "Instagram Teen Accounts" which default to the strictest privacy settings and have limitations on who can contact minors, the content minors can see, and the time of day minors can receive notifications. *See, e.g.*, Instagram, Introducing Instagram Teen Accounts: Built-In Protections for Teens, Peace of Mind for Parents (Sept. 17, 2024), https://perma.cc/8EQB-D3DG. Minors under 16 will need a parent's permission to change any of these Instagram Teen Accounts settings to less strict settings. *Id.* Via Teen Accounts, parents will have added supervision features, including ways to get insights into who their minors are chatting with and seeing topics their minor is looking at. *Id.* YouTube offers a "supervised experience" for teens, allowing parents (1) to receive email notifications when a teen uploads a video or starts a livestream; (2) to gain insights into their teen's channel activity (such as uploads, comments, and subscriptions); and (3) an option to link accounts between a parent and teen. *See* YouTube, My Family, https://perma.cc/4PQF-PQXY.

36. All NetChoice members prohibit minors under 13 from accessing their main services, although some offer separate experiences for users under 13 geared for that age group. For example, YouTube offers two services (YouTube Kids and a "Supervised Experience" on YouTube) for minors younger than 13 with parental consent. These services allow parents to select content settings, set screen time limits, and otherwise oversee their children's use of the services.

37. **Covered websites' dedication to beneficial user experiences and use of effective content moderation.** NetChoice's members devote vast resources to improving their services and curating the content that users post on their websites to best ensure that it is appropriate for users, especially with respect to minors.

38. Covered websites publish a wide variety of diverse content for many different audiences, but they face the common problem of how to address objectionable and harmful content.

See NetChoice, By the Numbers: What Content Social Media Removes and Why 1, https://perma.cc/RJA9-79D4 ("By the Numbers"). To address these issues, NetChoice members use content-moderation tools to restrict content they consider potentially harmful while promoting positive and age-appropriate content.

39. Objectionable content comes in many different forms. Some of that content is clearly illegal, such as child sexual abuse material ("CSAM"). *See id.* at 2. Other content, like hate speech and graphic violence, is lawful but still considered objectionable by many. *See id.* at 10-13. And some speech simply violates a particular website's rules for what speech it wants to disseminate within its own online community. *E.g.*, Nextdoor, Teens on Nextdoor, https://perma.cc/P2N4-EUHG ("Nextdoor is intended primarily for neighbors to share community-related information.").

40. NetChoice's members do not seek to disseminate objectionable and harmful speech. On the contrary, they actively work to prohibit and prevent objectionable and harmful speech on their websites. NetChoice's members have developed robust content-moderation policies and processes for detecting, prohibiting, and removing (or otherwise restricting access to) much of the speech seemingly covered by the Act. And NetChoice has successfully fought to preserve members' ability to moderate such content by challenging laws that seek to undermine those abilities. *E.g.*, *Moody*, 603 U.S. at 735.

41. NetChoice members' content-moderation policies and processes are effective. They address objectionable and harmful content before many (if any) users encounter that content. Indeed, a NetChoice report concluded that the "rate of violative content removed from platforms and the level at which it is removed prior to being seen by users makes clear companies are successfully prioritizing the safety of their users." By the Numbers at 13.

42. NetChoice's members are also continually working to develop new and improved technologies to identify objectionable and harmful content. *E.g.*, Google, Fighting Child Sexual Abuse Online, https://perma.cc/8FGE-CMA9.

MISSISSIPPI HOUSE BILL 1126

43. Mississippi's Governor signed House Bill 1126 into law on April 30, 2024. The Act's provisions regulating NetChoice's members took effect on July 1, 2024.

44. But on July 1, 2024, this Court enjoined Defendant's enforcement of the challenged provisions of the Act. ECF 30.

45. **The Act's content-based and speaker-based central coverage definition of "digital service provider" (§§ 2(a)-(b), 3).** The Act targets a set of identifiable disfavored internet websites under its "digital service provider" definition, which contains myriad content-based and speaker-based exclusions. These covered "actors" and "activities," *Moody*, 603 U.S. at 724, include the members and services identified above in ¶ 14.

46. Specifically, the Act regulates businesses that meet the Act's definition of "digital service provider," and "who provide[] a digital service that":

> (a) Connects users in a manner that allows users to socially interact with other users on the digital service;
>
> (b) Allows a user to create a public, semi-public or private profile for purposes of signing into and using the digital service; and
>
> (c) Allows a user to create or post content that can be viewed by other users of the digital service, including sharing content on:
>
> (i) A message board;
>
> (ii) A chat room; or
>
> (iii) A landing page, video channel or main feed that presents to a user content created and posted by other users.

§ 3(1).

47. The Act's use of the term "post" incorporates the ordinary meaning of the terms "post" and "posting," which denotes pieces of expressive content submitted to online services for multiple people to see.

48. For example, a "post" is ordinarily defined as "an electronic message or information that is put on a website in order to allow many people to see it." *Posting*, Cambridge.org Dictionary, https://perma.cc/64Z7-AR73.

49. Moreover, the Act's focus on "message board[s]" and "feeds," § 3(1)(c), illustrates that the Act regulates what are generally called "social media websites" and other online forums that allow people to engage in and consume protected speech posted by others.

50. In other words, the Act singles out the kinds of "social media" websites protected by the Supreme Court's decision in *Moody*—namely, websites "allow[ing] users to upload content . . . to share with others" and allowing those "viewing the content . . . [to] react to it, comment on it, or share it themselves." 603 U.S. at 719.

51. The common features of "social media websites" make the First Amendment analysis equivalent for all covered websites. *Yost*, 2025 WL 1137485, at *14; *Griffin II*, 2025 WL 978607, at *7.

52. A "digital service provider" is any "person who: (i) [o]wns or operates a digital service ['a website, an application, a program, or software that collects or processes personal identifying information with Internet connectivity']; (ii) [d]etermines the purpose of collecting and processing the personal identifying information of users of the digital service; and (iii) [d]etermines the means used to collect and process [such] information of users of the digital service." § 2(a)-(b).

53. Beyond expressly defining covered websites based on content such as "social[]" "interact[ion], the Act also excludes websites based on content.

54. The Act "does not apply to":

> (a) A digital service provider who processes or maintains user data in connection with the employment, promotion, reassignment or retention of the user as an employee or independent contractor, to the extent that the user's data is processed or maintained for that purpose;
>
> (b) A digital service provider's provision of a digital service that facilitates e-mail or direct messaging services, if the digital service facilitates only those services;
>
> (c) A digital service provider's provision of a digital service that:
>
> > (i) Primarily functions to provide a user with access to news, sports, commerce, online video games or content primarily generated or selected by the digital service provider; and
> >
> > (ii) Allows chat, comment or other interactive functionality that is incidental to the digital service; or
>
> (d) A digital service provider's provision of a digital service that primarily functions to provide a user with access to career development opportunities, including:
>
> > (i) Professional networking;
> >
> > (ii) Job skills;
> >
> > (iii) Learning certifications;
> >
> > (iv) Job posting; and
> >
> > (v) Application services.

§ 3(2). Moreover, the Act exempts an "Internet service provider, [or the] provider's affiliate or subsidiary, search engine or cloud service provider" if the entity "solely provides access or connection, including through transmission, download, intermediate storage, access software or other services, to an Internet website or other information or content: (a) [o]n the Internet; or (b) [o]n a facility, system or network not under the control of the [entity or its affiliate or subsidiary]." § 3(3).

55. Both based on its definition of "digital service provider" and the Act's exclusions, the Act excludes the "*kinds* of websites," for which *Moody* questioned whether a different First Amendment analysis might apply when assessing the First Amendment implications of distinct

compelled-speech laws that may also regulate non-social media services. *See* 603 U.S. at 718, 724-25 (discussing email, online marketplace, ride-sharing, and peer-to-peer payment services).

56. The Act's exclusion of "e-mail" and "direct messaging services," § 3(2)(a), excludes "email" and "direct messaging," *Moody*, 603 U.S. at 725.

57. The Act's exclusion of "commerce," § 3(2)(c), excludes "online marketplace[s] like Etsy" and "payment service[s] like Venmo," *Moody*, 603 U.S. at 725.

58. The Act's exclusion of websites where "content primarily generated or selected by the digital service provider," § 3(2)(c)(ii), excludes "ride-sharing service[s] like Uber," *Moody*, 603 U.S. at 725; *see also Fitch*, 2025 WL 1135279, at *6.

59. As for the kinds of services that the Fifth Circuit identified in the appeal from this Court's earlier decision, either NetChoice has identified them as covered by the Act, the Act does not apply, or the First Amendment analysis would be the same. *Fitch*, 2025 WL 1135279, at *6.

60. "Pinterest," "Reddit," and "X" (*id.*) are all NetChoice members, for which NetChoice seeks relief in this case. *See supra* ¶ 14.

61. The Act does not regulate "Uber," *Fitch*, 2025 WL 1135279, at *6, for at least the reasons discussed in ¶ 58.

62. The Act does not regulate "Google Mail" or "Google Meet," for 2025 WL 1135279, at *6, for at least the reasons discussed in ¶ 56.

63. The Act does not regulate "Google Maps" or "DraftKings," *Fitch*, 2025 WL 1135279, at *9, because (among other reasons) they are websites with "content primarily generated or selected by the digital service provider," § 3(2)(c)(ii).

64. "DraftKings," *Fitch*, 2025 WL 1135279, at *9, also "primarily functions to provide a user with access to . . . sports[and] commerce, § 3(2)(c)(i).

65. Moreover, if the Act were to apply to services like Google Maps or Microsoft Teams—or any other website that disseminates protected speech to minors or enables minors to engage in protected speech—the Act would be unconstitutional.

66. **The Act's age-verification requirement (§ 4(1)).** The Act requires covered websites to "make commercially reasonable efforts to verify the age of the person creating an account with a level of certainty appropriate to the risks that arise from the information management practices of the digital service provider." § 4(1).

67. The Act therefore requires covered websites to verify every account holder's age—including adults—as a precondition to those account holders' ability to create an account to access protected speech on members' websites. Yet many people may not wish to provide proof of age to gain access to the covered websites. And some people will be unable to do so.

68. The "commercially reasonable" requirement does not alter which websites the Act covers. Nor does it alleviate the unconstitutional burdens. Rather, it creates uncertainty for covered websites and fails to serve any purported governmental interests.

69. Nor does the "commercially reasonable" requirement decrease the chilling effect that age-verification has on users' access to protected speech.

70. **The Act's parental-consent requirement (§ 4(2)).** The Act also contains a parental-consent requirement: "A digital service provider shall not permit an account holder who is a known minor to be an account holder unless the known minor has the express consent from a parent or guardian." § 4(2). The Act defines "[k]nown minor" as "a child who is younger than eighteen (18) . . . who has not had the disabilities of minority removed for general purposes, and who the digital service provider knows to be a minor." § 2(d). Thus, the Act requires covered websites to obtain express parental consent as a precondition for known minors to be able to create

or maintain an account—and therefore access protected speech on covered websites. As discussed above, the Act requires covered websites to age-verify all users, and thus to know who is and is not a minor.

71. The Act includes a non-exhaustive list of "[a]cceptable methods of obtaining express consent," including:

> (a) Providing a form for the minor's parent or guardian to sign and return to the digital service provider by common carrier, facsimile, or electronic scan;
>
> (b) Providing a toll-free telephone number for the known minor's parent or guardian to call to consent;
>
> (c) Coordinating a call with a known minor's parent or guardian over video conferencing technology;
>
> (d) Collecting information related to the government-issued identification of the known minor's parent or guardian and deleting that information after confirming the identity of the known minor's parent or guardian;
>
> (e) Allowing the known minor's parent or guardian to provide consent by responding to an email and taking additional steps to verify the identity of the known minor's parent or guardian;
>
> (f) Any other commercially reasonable method of obtaining consent in light of available technology.

§ 4(2).

72. The Act does not account for the difficulty in verifying a parent-child relationship. *See Griffin I*, 2023 WL 5660155, at *4 ("[I]t is not clear what, if anything, [a website] must do to prove a parental relationship exists"); *id.* ("[T]he biggest challenge . . . with parental consent is actually establishing . . . the parental relationship." (quoting expert testimony)). These difficulties are compounded when, *e.g.*, families are nontraditional, family members have differences in last name or address, parents disagree with each other about consent, minors are unsafe at home, or parental rights have been terminated.

73. The "commercially reasonable" requirement does not alter which websites the Act covers. Nor does it alleviate the unconstitutional burdens. Rather, it creates uncertainty for covered websites and fails to serve any purported governmental interests.

74. Nor does the "commercially reasonable" requirement affect the Act's infringement on minors' First Amendment rights.

75. **The Act's monitoring-and-censorship requirements (§ 6).** The Act requires covered websites to monitor and censor content- and viewpoint-based categories of speech. Specifically, it requires a "digital service provider," "[i]n relation to a known minor's use of a digital service," to "make commercially reasonable efforts to develop and implement a strategy to prevent or mitigate the known minor's exposure to harmful material [as defined by state law] and other content that promotes or facilitates" enumerated categories of speech. § 6(1).

76. In short, the Act requires covered websites to monitor and censor speech, much of which is protected by the First Amendment, potentially even including *Romeo and Juliet* and *The Bell Jar*. The Act's broad, vague, and subjective categories of prohibited speech will chill dissemination of protected speech because—to avoid enforcement and the risk of significant monetary penalties—covered websites will be forced to moderate all content that even arguably implicates the Act's categories.

77. *First*, the Act requires covered websites to "prevent or mitigate" minors' "exposure to . . . content that promotes or facilitates the following harms to minors":

> (a) Consistent with evidence-informed medical information, the following: self-harm, eating disorders, substance use disorders, and suicidal behaviors;
>
> (b) Patterns of use that indicate or encourage substance abuse or use of illegal drugs;
>
> (c) Stalking, physical violence, online bullying, or harassment;
>
> (d) Grooming, trafficking, child pornography, or other sexual exploitation or abuse;
>
> (e) Incitement of violence; or

(f) Any other illegal activity.

§ 6(1). The Act does not define any of these terms, nor does it limit them to speech that is unprotected by the First Amendment. Rather, most of the categories are viewpoint-based and are subjective as applied in many individual cases.

78. These categories are nearly identical to the content-based and viewpoint-based categories of speech that Texas required to be monitored and blocked under an enjoined Texas law. *See CCIA*, 747 F. Supp. 3d at 1036.

79. *Second*, the Act requires covered websites to "prevent or mitigate" minors' "exposure to harmful material." § 6(1). The Act defines "harmful material" by reference to another provision of the state Code defining obscenity for minors. § 2(c) (citing Miss. Code § 11-77-3(d)).

80. Prohibited speech under the Act can include political speech, critically acclaimed literary works, and everyday communications. Many books, movies, and musical works at least arguably "promote[] or facilitate[]"—

- "Self-harm, eating disorders, substance use disorders, and suicidal behaviors": the biblical story of Samson (Judges 16:23-31), William Shakespeare's *Romeo and Juliet* (1597) and *Hamlet* (1603), art showing the suicide of Lucretia (*e.g.*, Rembrandt, 1664), David Hume's *Of Suicide* (1783), Tolstoy's *Anna Karenina* (1878), Kate Chopin's *The Awakening* (1899), Sylvia Plath's *The Bell Jar* (1963), the debate about assisted dying (*e.g.*, Peter Singer, *Practical Ethics* (1979)), films like *Zoolander* (2001) and *The Devil Wears Prada* (2006), and television shows like *13 Reasons Why* (2017-20).

- "Substance abuse or use of illegal drugs": Sir Arthur Conan Doyle's *The Adventures of Sherlock Holmes* (1892), F. Scott Fitzgerald's *The Great Gatsby* (1925), J.D. Salinger's *The Catcher in the Rye* (1951), the film *The Sandlot* (1993), the novel *The Perks of Being a Wallflower* (1999) and the film adaptation (2012), Toby Keith's *Weed with Willie* (2003), The Weeknd's Kids'-Choice-Award-nominated song *Can't Feel My Face* (2015), The Beatles' *Lucy in the Sky with Diamonds* (1967), and songs on Taylor Swift's *The Tortured Poets Department* (2024).

- "Stalking, physical violence, online bullying, or harassment": *The Phantom of the Opera* (1910, 2004), the musical *Chicago* (1975, 2002), The Police's *Every Breath You Take* (1983), Carrie Underwood's *Before He Cheats* (2006), the television series *Kitchen Nightmares* (2007-14), numerous horror movies (*Halloween* (1978), *Scream*

(1996), *I Know What You Did Last Summer* (1997)), and entire categories at large bookstores, *e.g.*, Stalking – Fiction, Barnes & Noble, https://perma.cc/EW45-UYVD.

- "Grooming, trafficking, child pornography, or other sexual exploitation or abuse": As the Supreme Court has recognized, even "teenage sexual activity and the sexual abuse of children" has "inspired countless literary works" protected by the First Amendment, such as "Romeo and Juliet" and the Oscar-winning movie "American Beauty." *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 247-48 (2002).

- "Incitement of violence": The Declaration of Independence itself was a call to arms against the British Crown. And invocations of violence can be found throughout literature. *Brown*, 564 U.S. at 796-98.

- "Any other illegal activity": A great deal of conduct is (and has been) illegal in Mississippi and other jurisdictions. Things that could be considered promoting illegal activity are ubiquitous in modern media, from heists and thefts in franchises like *Ocean's Eleven* (1960-present), *National Treasure* (2004-present), and *Despicable Me* (2010-present), to improvised traps and explosives in *The Goonies* (1985) and *Home Alone* (1990), to video games involving street racing such as the *Need for Speed* series (1994-present), to the latest pop hits like *Fortnight* by Taylor Swift (2024), in which the song's character muses about killing her husband and lover's wife. Indeed, even social media posts expressing support for defacing works of art and spraying graffiti could be promoting illegal activity.

81. An even broader problem with the Act is that what qualifies for enforcement will often be open to debate, because the meaning conveyed by the speech at issue can depend on context, nuance, and the subjective understanding of users.

82. Although content that is prohibited by the Act overlaps with the content that NetChoice's members address under their own voluntary content-moderation policies, that overlap does not justify the Act's restrictions. *First*, the Act is a *governmental* demand to monitor and censor speech, which violates both the websites and their users' constitutional rights in a way that voluntary private content moderation does not—and indeed cannot. *Second*, the Act is overinclusive because it sweeps in substantially more protected and valuable speech than do members' current policies. Nothing in the Act limits the Act's scope to unprotected speech. *Third*, the threat of liability will inevitably chill the dissemination of an even broader range of speech. That is because websites have no way to know whether Defendant will conclude that a particular content-

moderation policy complies with the Act's requirement for websites to "develop and implement a strategy to prevent or mitigate" exposure to certain content. § 6(1). That uncertainty about liability will push websites to adopt broader policies and more aggressive content-moderation enforcement strategies, all of which will chill dissemination of protected speech.

83. The Act also contains a vague exception, which provides that "[n]othing in" the monitoring-and-censorship requirements "shall be construed to require a digital service provider to prevent or preclude":

> (a) Any minor from deliberately and independently searching for, or specifically requesting, content; or
>
> (b) The digital service provider or individuals on the digital service from providing resources for the prevention or mitigation of the harms described in subsection (1), including evidence-informed information and clinical resources.

§ 6(2). The Act does not explain how covered websites are supposed to prevent exposure to the State's list of prohibited categories of speech without also preventing minors from being able to "deliberately and independently search[] for" such content.

84. **The Act's enforcement provisions (§§ 7, 8; Miss. Code §§ 75-24-19, 75-24-20).** The Act allows for large penalties, which will chill covered websites' dissemination of speech.

85. The Act amends the Mississippi Code to provide that a violation of the Act is an unfair and deceptive trade practice. § 8 (amending Miss. Code § 75-24-5). A knowing and willful use of an unfair or deceptive trade practice (or a violation of an injunction for a previous unfair or deceptive trade practice) is subject to a civil penalty of up to $10,000 per violation. Miss. Code § 75-24-19(1). Moreover, a knowing and willful violation is also a criminal act, punishable through increasing fines and imprisonment. *Id.* § 75-24-20. The Act also creates a private right of action that allows parents to seek declaratory or injunctive relief (but not monetary relief). § 7.

CLAIMS

86. Plaintiff raises both (1) a facial challenge to the Act's provisions challenged in this lawsuit; and (2) a challenge to these provisions as applied to the members and services identified in ¶ 14.

87. For all First Amendment claims, the facial challenge standard asks whether "a substantial number of [the Act's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Moody*, 603 U.S. at 723 (quoting *Ams. for Prosperity*, 594 U.S. at 61); *accord* ECF 30 at 18. At a minimum, the Act is invalid to the extent it regulates "social media" websites, including as applied to Plaintiffs' members' regulated services identified in ¶ 14. *See John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010) (analyzing First Amendment challenge "to the extent of [the] reach" defined by Plaintiff).

88. The First Amendment facial challenge here is straightforward "from the face of the law": All aspects of the Act's speech-restricting provisions, "in every application to a covered social media company, raise the same First Amendment issues," so the Court "need not 'speculate about "hypothetical" or "imaginary" cases.'" *X Corp. v. Bonta*, 116 F.4th 888, 899 (9th Cir. 2024) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008)); *CCIA*, 747 F. Supp. 3d at 1038 (facial challenge proper because state law "raises the same First Amendment issues in every application to a covered business" (quoting *Bonta*, 113 F.4th at 1116; (internal quotation marks omitted))); *Reyes*, 748 F. Supp. 3d at 1121 n.92 (noting that First Amendment facial challenge "questions are easily answered" where "[t]here is no dispute about who and what the Act regulates" or "how the First Amendment applies to *different* websites or regulatory requirements" (internal citation omitted)).

89. There can be "no dispute that users engage in protected speech on all the platforms that are arguably within the Act's proscription" and "the Act imposes a platform-wide burden on

users' right to engage in that speech," which does not "differ between the platforms regulated." *Griffin II*, 2025 WL 978607, at *7.

90. And it certainly does not differ among regulated NetChoice members' services.

91. Similarly, for Plaintiff's First and Fourteenth Amendment vagueness claims, "void-for-vagueness challenges are successfully made when laws have the capacity 'to chill constitutionally protected conduct, especially conduct protected by the First Amendment.'" *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 546 (5th Cir. 2008) (citation omitted) (collecting cases); *see Kolender v. Lawson*, 461 U.S. 352, 358 n.8 (1983). Here, a facial vagueness challenge is proper because "there is no reason to believe one social media company is better suited than another to understand [the Act's] vague terms." *CCIA*, 747 F. Supp. 3d at 1031.

92. Each First and Fourteenth Amendment challenge raises the rights of both NetChoice members and those who use or could prospectively use NetChoice members' websites.

COUNT I
42 U.S.C. § 1983
VIOLATION OF THE FIRST AMENDMENT, AS INCORPORATED AGAINST THE STATES BY THE FOURTEENTH AMENDMENT
(ALL SPEECH REGULATIONS RELYING ON CENTRAL COVERAGE DEFINITION – MISSISSIPPI HB 1126 §§ 1-8)

93. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

94. As incorporated against the States by the Fourteenth Amendment, the First Amendment's Free Speech and Free Press Clauses provide that governments "shall make no law . . . abridging the freedom of speech, or of the press." U.S. Const. amend. I. The First Amendment protects "publish[ing]," *Reno*, 521 U.S. at 853; "disseminat[ing]," *303 Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023); and "creating, distributing, [and] consuming" protected speech, *Brown*, 564 U.S. at 792 n.1. And all those rights apply to "social-media platforms." *Moody*, 603 U.S. at 719. The "speech social media companies engage in when they make decisions about how to construct

and operate their platforms . . . is protected speech" under the First Amendment. *Reyes*, 748 F. Supp. 3d at 1120.

95. "When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *FEC v. Cruz*, 596 U.S. 289, 305 (2022) (citation omitted).

96. The State cannot demonstrate that the Act's restrictions and burdens on speech satisfy any form of heightened First Amendment scrutiny.

97. The Act's central coverage definition is unconstitutionally content-based.

98. "[W]here a statute's gateway coverage definition divides the universe into covered and uncovered business based on the type of content they publish, those statutes are content-based and subject to strict scrutiny." *Bonta*, 2025 WL 807961, at *11, *13.

99. The "Government's content-based burdens must satisfy the same rigorous scrutiny as its content-based bans." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011) (citation omitted). The State lacks a sufficient governmental interest supporting the Act. Regardless, the Act is not properly tailored to satisfy any form of First Amendment scrutiny.

100. **The Act triggers strict scrutiny.** The Act triggers strict scrutiny because its provisions defining which "digital service provider[s]" are covered, §§ 2(a)-(b), 3, are content-based.

101. This Court has already correctly concluded that the Act's central definition is content-based and triggers strict scrutiny. *See* ECF 30 at 16-23.

102. The First Amendment's "most basic" principle is that "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Brown*, 564 U.S. at 790-91 (citation omitted). A law "is facially content based . . . if it applies to particular speech because of the topic discussed or the idea or message expressed." *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022) (citation omitted). Government cannot use

"subtler forms of discrimination that achieve identical results based on function or purpose." *Id.* at 74. "Content-based laws . . . are presumptively unconstitutional." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

103. The Act's central coverage definition is content-based because it draws lines based on the subject of the speech available on a particular website. For instance, the Act *includes* websites based on whether they allow users to interact "socially." § 3(1)(a).

104. Likewise, the Act *excludes* websites that "[p]rimarily function to provide a user with access to news, sports, commerce, online video games," § 3(2)(c)(i), and "career development opportunities," § 3(2)(d). Thus, both the Act's general definition of what is covered and each of its exclusions are based on the subject matter presented on a particular website. "That is about as content-based as it gets." *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2346 (2020) (controlling plurality op.) (content-based exceptions trigger strict scrutiny); *see also Sorrell*, 564 U.S. at 564 (content-based exceptions render law content-based); *Reyes*, 748 F. Supp. 3d at 1122; *Yost*, 716 F. Supp. 3d at 557-58.

105. The Act also triggers heightened First Amendment scrutiny because its central coverage definition is speaker-based. "[L]aws that single out the press, or certain elements thereof, for special treatment pose a particular danger of abuse by the State, and so are always subject to at least some degree of heightened First Amendment scrutiny." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 640-41 (1994) (cleaned up). The First Amendment limits state power to enforce "restrictions distinguishing among different speakers, allowing speech by some but not others." *Citizens United v. FEC*, 558 U.S. 310, 340 (2010).

106. The Act's central coverage definition is speaker-based because it singles out for favorable treatment websites that include "content primarily generated or selected by the digital

service provider" while burdening otherwise similar websites that disseminate user-generated content, § 3(2)(c)(i), even if those websites also post or create their own content (as many covered websites do). It likewise favors websites that "provide a user with access to news, sports, commerce, online video games," § 3(2)(c)(i), and "career development opportunities," § 3(2)(d).

107. Because the Act's central coverage definition is both content-based and speaker-based, so too is the entire Act, as well as each individual provision of the Act.

108. The entire Act, as well as each individual provision of the Act that restricts or burdens protected speech, therefore triggers and fails strict scrutiny. *See Reyes*, 748 F. Supp. 3d at 1120 (finding "persuasive" the argument that "the entire Act facially violates the First Amendment because the Act's operative [speech-restricting] provisions each rely on the Central Coverage Definition").

109. The Act's age-verification requirement, § 4(1), regulates and burdens speech by requiring adults and minors to provide personal information to access protected speech.

110. The Act's parental-consent requirement, § 4(2), regulates and burdens speech by requiring minors to obtain parental consent to access protected speech.

111. The Act's monitoring-and-censorship requirements § 6, regulate and burden speech by restricting the dissemination of content and requiring covered websites to monitor content.

112. The Act's data regulations, § 5, are "[g]overnment regulation[s] of speech," *Reed*, 576 U.S. at 163.

113. All of the provisions above rely on the central "digital service provider" definition.

114. Therefore, because each of these provisions of the Act is a "[g]overnment regulation of speech," *id.*, and relies on the Act's content-based and speaker-based central coverage

definition, each provision triggers strict scrutiny (or, at a minimum, heightened First Amendment scrutiny).

115. **The entire Act fails strict scrutiny.** The Act cannot satisfy any form of heightened First Amendment scrutiny.

116. Strict scrutiny requires a State to use "the least restrictive means of achieving a compelling state interest." *AFP*, 594 U.S. at 607 (citation omitted).

117. The Act does not serve any compelling governmental interest.

118. Although "a State possesses legitimate power to protect children from harm," "that does not include a free-floating power to restrict the ideas to which children may be exposed." *Brown*, 564 U.S. at 794.

119. Under the First Amendment, the State has the burden to "specifically identify" how the Act addresses an "actual problem in need of solving." *Id.* at 799 (citation omitted). Strict scrutiny demands that "the curtailment of free speech must be actually necessary to the solution." *Id.* Moreover, Defendant must demonstrate that there is a problem in need of a *governmental* solution, as compared to private or family solutions, and that any such governmental solution is the one with the least possible restrictive effect on speech.

120. Defendant cannot carry either burden. Parents have a wealth of resources to help oversee their minor children online, and those resources provide families more flexibility and better-tailored solutions than the State's one-size-fits-all mandate. The Supreme Court has repeatedly endorsed similar parental controls over governmental intervention. *See, e.g.*, *Ashcroft*, 542 U.S. at 666-67; *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 826 (2000).

121. The State cannot "specifically identify" how the Act's content- and speaker-based scope responds to "an actual problem in need of solving." *Brown*, 564 U.S. at 799 (cleaned up).

Nor can it demonstrate why the Mississippi Legislature ignored the viable alternatives available to parents. *See, e.g.*, *Bonta*, 113 F.4th at 1121; *Reyes*, 748 F. Supp. 3d at 1126.

122. Whether under strict scrutiny or another form of heightened First Amendment scrutiny, the Act is neither properly tailored nor narrowly tailored to any articulated interest. It "is either underinclusive or overinclusive, or both, for all the purported government interests at stake." *Yost*, 2025 WL 1137485, at *22; *see Reyes*, 748 F. Supp. 3d at 1126 n.170 (citation omitted).

123. The Act is overinclusive because it sweeps in all kinds of websites, without tailoring sufficient to match whatever governmental interests Defendant may assert.

124. The Act is also overinclusive because it regulates all manner of protected speech, including political and religious speech that lies at the very heart of the First Amendment.

125. The Act's one-size-fits-all approach is overbroad because it treats all minors alike, from websites' youngest users to seventeen-year-olds, regardless of differences in those minors' developmental stage. *See Reno*, 521 U.S. at 865-66; *Am. Booksellers Ass'n*, 484 U.S. at 396.

126. The Act is also underinclusive because it contains myriad exemptions, some of which allow unrestricted access to the exact same speech on the same or a different website. For example, a 15-year-old can read a news article on the Clarion-Ledger's website (or even on LinkedIn) but cannot read that same article on Facebook without parental consent. A 16-year-old athlete can watch sports videos on ESPN but cannot share self-edited football recruiting highlight videos on Instagram without parental consent. A 17-year-old can listen to a Beyoncé song on Spotify but cannot listen to that same song on YouTube without parental consent (or possibly not at all depending on the content of the lyrics). And a minor can evidently access speech that is otherwise restricted on any website, provided she "deliberately and independently search[es] for, or specifically request[s]" it. § 6(2). These exemptions undermine any contention that the State is

addressing a serious issue, as "a law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited." *Reed*, 576 U.S. at 172 (cleaned up); *see Brown*, 564 U.S. at 802; *Griffin II*, 2025 WL 978607, at *11 (holding that state law regulating some websites but exempting "interactive gaming websites and platforms" was "not narrowly tailored").

127. Even if the Act were to apply to other websites with user-created content such as blogs with user comments, the Act would be facially unlawful as those kinds of websites raise the same First Amendment issues and would render the Act even more improperly tailored.

128. At a minimum, "a substantial number of [the Act's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Moody*, 603 U.S. at 723 (citation omitted).

129. Regardless, the Act is unconstitutional as applied to NetChoice members' services identified in ¶ 14.

130. The Act's central coverage definition is integral to the entire Act. §§ 1-8. Without this central definition, no other provision in the Act could operate, and thus the entire Act requires invalidation.

131. Unless declared invalid and enjoined, the Act, §§ 1-8, will unlawfully deprive Plaintiff's members and Internet users of their fundamental First Amendment rights and will irreparably harm Plaintiff, its members, and Internet users.

COUNT II
42 U.S.C. § 1983
VOID FOR VAGUENESS UNDER THE FIRST AND FOURTEENTH AMENDMENTS
(CENTRAL COVERAGE DEFINITION – MISSISSIPPI HB 1126 §§ 1-8)

132. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

133. The Act's central coverage definition of "digital service provider," §§ 2(a)-(b), 3, is unconstitutionally vague, and it violates principles of free speech and due process.

134. "A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox TV Stations, Inc.*, 567 U.S. 239, 253 (2012). And a law is unconstitutionally vague if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States v. Williams*, 553 U.S. 285, 304 (2008). The constitutional standard for vagueness is heightened for speech restrictions under the First Amendment: "When speech is involved, rigorous adherence to" requirements of clarity in regulation "is necessary to ensure that ambiguity does not chill protected speech." *Fox*, 567 U.S. at 253-54.

135. The Act's central coverage definition fails to provide this necessary notice. The Act does not define what it means for a website to "allow[] users to socially interact." § 3(1)(a). It is difficult or impossible to banish only the "social[]" aspects of human interaction, or to know where the line is between "social" and, say, "business" or "professional" interaction. Almost by definition, any medium that allows interaction of any kind necessarily allows social interaction, too. Thus, almost all websites that enable any kind of interaction among users could plausibly be covered by the Act if they meet the Act's other coverage requirements.

136. Nor does the Act explain what it means to exclude websites that "[p]rimarily function[]" to provide users with "access to" certain categories of speech such as "news, sports, commerce, [and] online video games." § 3(2)(c)(i). Some websites allow people to use the services for multiple reasons, or for different purposes at different times. For example, some people may "[p]rimarily" use a covered website for exempted "gam[ing]" purposes, while others may use the

website for "post[ing]" or "interact[ive]" purposes. § 3(1)(a), (c), (2)(c)(i). The primary function of websites can thus vary from user to user, and covered websites have no realistic way to know how the website functions for each user.

137. Moreover, the Act excludes certain websites that provide "chat, comment, or other interactive functionality that is incidental to" certain "digital service[s]." § 3(2)(c)(ii). Just like "primarily function," "incidental to" is also vague, and the Act provides no guidance as to its meaning.

138. Many websites will have no way of knowing what these "term[s]" mean, even though they are "critical to determining which entities fall within [the Act]'s scope." *Griffin II*, 2025 WL 978607, at *15. Therefore, "[c]ompanies must choose between risking unpredictable and arbitrary enforcement . . . and implementing the Act's costly . . . requirements. Such ambiguity renders a law unconstitutional." *Id.* at *16; *see FCC*, 567 U.S. at 253.

139. Because of this vagueness, the Act's central coverage definition violates the First Amendment and the Due Process Clause of the Fourteenth Amendment.

140. The Act's central coverage definition is integral to the entire Act. §§ 1-8. Without this central definition, no other provision in the Act could operate, and thus the entire Act requires invalidation.

141. Unless declared invalid and enjoined, the Act, §§ 1-8, will unlawfully deprive Plaintiff's members and Internet users of their First Amendment and Due Process rights and will irreparably harm Plaintiff, its members, and Internet users.

COUNT III
42 U.S.C. § 1983
VIOLATION OF THE FIRST AMENDMENT, AS INCORPORATED AGAINST THE STATES BY THE FOURTEENTH AMENDMENT
(AGE VERIFICATION – MISSISSIPPI HB 1126 § 4(1))

142. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

143. The Act's age-verification requirement, § 4(1), is unconstitutional and cannot satisfy any form of First Amendment scrutiny.

144. Mississippi's "imposition of an age-verification requirement for account creation is maximally burdensome. It erects barriers to accessing entire social media platforms" and "hinders adults' ability to speak and receive protected speech online." *Griffin II*, 2025 WL 978607, at *13.

145. Accordingly, age-verification "burdens social media access for all [users]—both adults and minors whose parents would allow them to use social media." *Id.* at *8.

146. Heightened First Amendment scrutiny applies whenever governments age-gate access to protected speech. *Brown*, 564 U.S. at 794.

147. Governmental demands for people to provide identification or personal information burden and infringe access to protected speech and the ability to engage in protected speech. *See, e.g.*, *Ashcroft*, 542 U.S. at 667; *Reno*, 521 U.S. at 874 (similar).

148. "Requiring adult users to produce state-approved documentation to prove their age and/or submit to biometric age-verification testing imposes significant burdens on adult access to constitutionally protected speech and 'discourages users from accessing the regulated sites.'" *Griffin II*, 2025 WL 978607, at *8 (cleaned up; quoting *Reno*, 521 U.S. at 856). So too for minors. *Id.* Those who are not deterred must "forgo the anonymity otherwise available on the internet" as the state-imposed price of admission. *Id.* (quoting *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 99 (2d Cir. 2003)); *see ACLU v. Mukasey*, 534 F.3d 181, 197 (3d Cir. 2008) (laws cannot force individuals "to relinquish their anonymity to access protected speech").

149. The age-verification provision triggers strict scrutiny because it relies on the Act's central coverage definition.

150. The age-verification provision independently triggers strict scrutiny.

151. The State cannot demonstrate what purported problem this provision responds to, how the provision is necessary to solve the problem, or why the existing and plentiful choices of private tools available to parents are insufficient to address any purported problem.

152. The age-verification requirement is also not properly tailored.

153. The Act's age-verification requirement is integral to the entire Act. §§ 1-8. Without this provision, no other provision in the Act could operate. The age-verification provision is not severable and thus the entire Act is invalid.

154. Unless declared invalid and enjoined, the Act's age-verification provision, § 4(1), will unlawfully deprive Plaintiff's members and Internet users of their fundamental First Amendment rights and will irreparably harm Plaintiff, its members, and Internet users.

COUNT IV
42 U.S.C. § 1983
VIOLATION OF THE FIRST AMENDMENT, AS INCORPORATED AGAINST THE STATES BY THE FOURTEENTH AMENDMENT
(PARENTAL CONSENT – MISSISSIPPI HB 1126 § 4(2))

155. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

156. The Act's parental-consent requirement, § 4(2), is unconstitutional and cannot satisfy any form of First Amendment scrutiny.

157. Minors have robust First Amendment rights, and websites that publish and disseminate speech have the right to publish and disseminate protected speech to minors absent governmental restraint. Although States have power to protect minors, that power "does not include a free-floating power to restrict the ideas to which children may be exposed." *Brown*, 564 U.S. at 794.

158. Heightened First Amendment scrutiny applies whenever governments age-gate access to protected speech. *Brown*, 564 U.S. at 794.

159. The Act requires covered websites and users to secure parental consent before allowing users to create or maintain an account and, therefore, before users can access protected speech. § 4(2). But the Supreme Court has held that laws requiring parental consent for minors to access or engage in protected speech are unconstitutional. *Brown*, 564 U.S. at 795 & n.3, 804-05.

160. Minors' protections should apply with special force to the covered websites here, which disseminate and facilitate a broad range of valuable speech. *Moody*, 603 U.S. at 716-17, 726-28, 730-31; *Packingham*, 582 U.S. at 105. That, in part, is why courts have held that parental-consent requirements for minors to use "social media" websites violate the First Amendment. *Yost*, 2025 WL 1137485, at *20, *25; *Griffin II*, 2025 WL 978607, at *8.

161. The parental-consent provision triggers strict scrutiny because it relies on the Act's central coverage definition.

162. The parental-consent provision independently triggers strict scrutiny. *Yost*, 2025 WL 1137485, at *20.

163. The State cannot demonstrate what purported problem this provision responds to, how the provision is necessary to solve the problem, or why the existing and plentiful choices of private tools available to parents are insufficient to address any purported problem.

164. The parental-consent requirement is also not properly tailored.

165. As just one example, the Act is underinclusive because, if the government is concerned about minors accessing covered websites due to particular purported risks or harms of doing so, it makes no sense to allow minors to be exposed to such harms so long as they have parental consent. *See Brown*, 564 U.S. at 802; *Yost*, 2025 WL 1137485, at *22; *Griffin II*, 2023 WL 5660155, at *13.

166. Unless declared invalid and enjoined, the Act's parental-consent requirement, § 4(2), will unlawfully deprive Plaintiff's members and Internet users of their fundamental First Amendment rights and will irreparably harm Plaintiff, its members, and Internet users.

COUNT V
42 U.S.C. § 1983
VIOLATION OF THE FIRST AMENDMENT, AS INCORPORATED AGAINST THE STATES BY THE FOURTEENTH AMENDMENT
(MONITORING AND CENSORSHIP – MISSISSIPPI HB1126 § 6)

167. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

168. The Act's monitoring-and-censorship requirements, § 6, are prohibited by the First Amendment.

169. These requirements are prior restraints, as well as viewpoint-based and content-based restrictions on speech. These HB18 provisions therefore trigger and fail strict scrutiny. *Reed*, 576 U.S. at 171. And they are "substantially overbroad, and therefore invalid under the First Amendment." *United States v. Stevens*, 559 U.S. 460, 481-82 (2010). Regardless, they fail whatever form of heightened First Amendment scrutiny could possibly apply.

170. The Act's message is clear: ban and remove State-disfavored speech or face adverse actions by the Attorney General through investigation, subpoena, fines, and other adverse legal changes. The government cannot censor this speech "directly," so it cannot "coerce" websites to suppress "speech on [its] behalf." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 190 (2024).

171. The First Amendment protects social media websites' "choices about what third-party speech to display" and "which messages are appropriate." *Moody*, 603 U.S. at 711, 716. In other words, the "government may not . . . alter a private speaker's own editorial choices about the mix of speech it wants to convey." *Id.* at 734.

172. That is why the Western District of Texas preliminarily enjoined a similar set of requirements as facially unconstitutional under the First Amendment: "Because the monitoring-

and-filtering requirements are overbroad, overly restrictive, and underinclusive, they are properly enjoined on their face." *CCIA*, 747 F. Supp. 3d at 1038.

173. Here, the Act's monitoring-and-censorship requirements are an unconstitutional prior restraint. "[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976); *see Freedman v. Maryland*, 380 U.S. 51, 57 (1965); *Bantam Books v. Sullivan*, 372 U.S. 58, 70 (1963). They are subject to "the most exacting scrutiny." *Smith v. Daily Mail Publ'g. Co.*, 443 U.S. 97, 102 (1979). The Act's monitoring-and-censorship requirements are a prior restraint on the ability of covered websites *and* their users to publish, engage in, and disseminate speech.

174. The Act's requirement to monitor and censor content is a twenty-first century version of the censorship boards that the Supreme Court has long held violate the Constitution. *Freedman v. Maryland*, 380 U.S. 51 (1965); *Bantam Books v. Sullivan*, 372 U.S. 58 (1963).

175. Furthermore, the Supreme Court has warned that requiring private entities to constantly screen and monitor the speech they disseminate causes chilling effects on such protected speech—even when the regulation ostensibly targets only unprotected speech. *Smith v. California*, 361 U.S. 147, 152-53 (1959).

176. The Act's monitoring-and-censorship requirements trigger strict scrutiny because they rely on the Act's central coverage definition.

177. The Act's monitoring-and-censorship requirements independently trigger strict scrutiny because they discriminate based on overbroad content- and viewpoint-based grounds.

178. *First*, the Act restricts certain content-based categories of prohibited speech "based on its communicative content." *Reed*, 576 U.S. at 163 (collecting cases).

179. *Second*, the Act targets particular viewpoints based on the State's "subjective judgment that the content of protected speech is offensive or inappropriate." *Robinson v. Hunt Cnty.*, 921 F.3d 440, 447 (5th Cir. 2019) (citing *Matal v. Tam*, 582 U.S. 218, 243-44 (2017)). The Act regulates speech that "*promotes*" or "*facilitates*" particular categories of expression. § 6(1) (emphasis added). Thus, for example, the Act regulates speech that "promotes" "substance abuse," such as a song expressing the view that binge drinking is good. § 6. Likewise, under the Act, speech seeking to promote the legalization of cannabis in Mississippi (the "use of illegal drugs," § 6(1)(b)) would have to be censored but content advocating for keeping it illegal is allowed.

180. "[I]t is all but dispositive" that such a law is unconstitutional if the "law is content based and, in practice, viewpoint discriminatory." *Sorrell*, 564 U.S. at 571. As the Supreme Court recently reiterated: "At the heart of the First Amendment's Free Speech Clause is the recognition that viewpoint discrimination is uniquely harmful to a free and democratic society." *Vullo*, 602 U.S. at 187.

181. *Third*, the Act's restrictions are overbroad because they go beyond regulating unprotected speech, which will result in chilling a broad amount of protected speech. The "government [cannot] proscribe unprotected content through a regulation that simultaneously encompasses a substantial amount of protected content." *Seals v. McBee*, 898 F.3d 587, 596 (5th Cir. 2018).

182. The Act applies to a significant amount of protected and valuable speech, such as well-known works of art and literature. But First Amendment protection does not end there. Rather, the First Amendment protects all manner of speech, including speech that promotes social ills and illegal activities. *E.g.*, *Hess v. Indiana*, 414 U.S. 105, 108 (1973); *Cohen v. California*, 403 U.S. 15, 16 n.1 (1971).

183. Even the Act's prohibition of "harmful material," or obscenity as to minors, is over-broad because it does not differentiate between speech that may be obscene to 17-year-olds and speech that may be obscene to younger minors. Such a comparison is required for any obscenity-for-minors regulation to pass constitutional muster. *E.g.*, *Am. Booksellers*, 484 U.S. at 396; *Reno*, 521 U.S. at 866.

184. To avoid enforcement and penalties, many covered websites seeking to comply with the Act will be forced to censor practically most, if not all, content that even comes close to the categories of speech regulated by the Act.

185. Moreover, the Act's one-size-fits all approach will lead to websites defaulting to monitoring-and-censorship policies and procedures that allow content fit only for the youngest and most sensitive users. This will harm adults too, not just minors. Many websites do not have the ability to "age-gate" content, which means that, to implement such requirements, they would have to limit speech for all users—adults included.

186. Faced with that possibility, many websites may choose to block minors' access altogether, which would further injure those minors and prevent them from engaging in or accessing protected speech. *Id.*

187. For these reasons, the Act's monitoring-and-censorship requirements reach "a substantial amount of protected speech," *Moody*, 602 U.S. at 723 (citation omitted), rendering them "substantially overbroad" and "facially invalid," *City of Houston v. Hill*, 482 U.S. 451, 458 (1987).

188. The Act's monitoring-and-censorship requirements fail strict scrutiny. The Act itself and the Act's monitoring-and-censorship requirements also fail any other form of heightened First Amendment scrutiny, such as exacting or intermediate scrutiny.

189. The State lacks a compelling (or otherwise overriding) interest in regulating protected speech. Specifically, the State lacks any legally cognizable interest in "protect[ing] the young from ideas or images that a legislative body thinks unsuitable for them." *Erznoznik*, 422 U.S. at 213-14. "[D]isgust is not a valid basis for restricting expression" of protected speech. *Brown*, 564 U.S. at 798. And even when regulating unprotected speech, the State may not pick and choose specific viewpoints to disfavor. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 383-84 (1992). Regardless, the Legislature did not include any findings or purposes in the Act to justify these burdensome requirements.

190. The monitoring-and-censorship requirements are not narrowly tailored. Rather, they are both overinclusive and underinclusive in numerous ways, as shown by the non-exhaustive reasons discussed below.

191. *First*, the State has less restrictive alternative means to combat the social ills it seeks to regulate indirectly through these requirements, such as state criminal laws. "The normal method of deterring unlawful conduct is to impose an appropriate punishment on the person who engages in it." *Bartnicki v. Vopper*, 532 U.S. 514, 529 (2001). For example, Mississippi already penalizes, or otherwise regulates, the harmful conduct related to the speech that the Act seeks to censor:

- "A person who wilfully, or in any manner, advises, encourages, abets, or assists another person to take, or in taking, the latter's life, or in attempting to take the latter's life, is guilty of [a] felony." Miss. Code § 97-3-49; *see also id.* § 37-3-101 (requiring suicide-prevention policies in local school districts).

- "[I]t is unlawful for any person knowingly or intentionally . . . [t]o sell, barter, transfer, manufacture, distribute, dispense or possess with intent to sell, barter, transfer, manufacture, distribute or dispense, a controlled substance." *Id.* § 41-29-139(a); *see also id.* § 41-29-139(d)(3) (prohibiting providing drug paraphernalia to a minor); *id.* § 41-29-323 (establishing substance abuse programs).

- "It is unlawful for a person" to "commit[ ] the offense of cyberstalking," which includes "[e]lectronically mail[ing] or electronically communicat[ing] to another repeatedly, whether or not conversation ensues, for the purpose of threatening, terrifying or harassing any person." *Id.* § 97-45-15; *see also id.* § 97-3-107 (prohibiting stalking).

- Mississippi law also criminalizes various harms to minors, *see, e.g.*, *id.* § 97-5-27 (prohibiting disseminating sexually oriented material to minors and "computer luring" of a minor); *id.* § 97-5-33 (prohibiting any visual depiction of a child engaging in sexual conduct); criminalizes other forms of exploitation and violence, *see, e.g.*, *id.* § 97-3-2 (prohibiting certain "crimes of violence"); *id.* § 97-3-54.1 (prohibiting human trafficking); and criminalizes distribution of obscene materials, *id.* § 97-29-101.

192. Furthermore, Mississippi law already imposes criminal liability for aiding or abetting crimes, *e.g.*, *Bryant v. State*, 319 So. 3d 1208, 1211 (Miss. Ct. App. 2021), including actions taken "with the purpose of promoting or facilitating the commission" of a crime, *Hollins v. State*, 799 So. 2d 118, 123 (Miss. Ct. App. 2001).

193. Regulating speech as a means to address underlying criminal conduct is a "prophylaxis-upon-prophylaxis approach" that the Supreme Court's First Amendment precedents have rejected. *Cruz*, 596 U.S. at 306 (citation omitted).

194. In addition, parents have many different means of overseeing their children's Internet use.

195. *Second*, the monitoring-and-censorship requirements are underinclusive. Minors still have access to harmful speech on the Internet that the Act does not cover—not only on websites that do not offer interactive functionality at all, but also on interactive websites that fall within the Act's exceptions for "sports, commerce, online video games or content primarily generated or selected by the digital service provider." § 3(2)(c)(1). The same is true of potentially harmful speech that minors may encounter in other mediums beyond the Internet, such as books or television. And the Act is also underinclusive because it appears to allow minors to be exposed to potentially objectionable or harmful content if they "deliberately and independently search[] for" or "specifically request[] it." § 6(2)(a). That provision indicates that Mississippi does not object to minors accessing the censored categories of speech so long as they just ask for them. But "a law

cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited." *Reed*, 576 U.S. at 172 (cleaned up).

196. *Third*, the monitoring-and-censorship requirements are overinclusive because they do not distinguish between requirements for websites' youngest users and their 17-year-old users.

197. Unless declared invalid and enjoined, the Act's monitoring-and-censorship requirements, § 6, will unlawfully deprive Plaintiff's members and Internet users of their fundamental First Amendment rights and will irreparably harm Plaintiff, its members, and Internet users.

COUNT VI
42 U.S.C. § 1983
VOID FOR VAGUENESS UNDER THE FIRST AND FOURTEENTH AMENDMENTS
(MONITORING AND CENSORSHIP – MISSISSIPPI HB 1126 § 6)

198. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

199. The Act's monitoring-and-censorship requirements, § 6, are unconstitutionally vague, and that vagueness will chill the publication of protected speech.

200. The Western District of Texas has concluded that a similar set of requirements used unconstitutionally vague terms: "Those provisions are vague because both the verbs (promotes . . . and facilitates) and the objects of those verbs (e.g., stalking, bullying, substance abuse, and grooming) are broad and undefined. Especially when put together, the provisions are unconstitutionally vague." *CCIA*, 747 F. Supp. 3d at 1040.

201. *First*, the Act's mandate to prevent minors' "exposure to" content, and its exceptions for minors seeking out content, make websites' compliance obligations unclear. The Act states that covered websites must "prevent or mitigate the known minor's exposure to" prohibited content. § 6(1). Yet it also allows minors to "deliberately and independently search[] for, or specifically request[] content." *Id.* § 6(2)(a). It is not clear how covered websites are supposed to

comply with the former without restricting the latter. This vague requirement will chill protected speech.

202. *Second*, the Act does not define key terms, including what it means for speech to "promote[]" or "facilitate[]" particular harms. § 6(1); *Baggett v. Bullitt*, 377 U.S. 360, 371-72 (1964) (law regulating speech unconstitutional for vagueness because it hinged on "promote").

203. Nor does the Act define categories of prohibited content, including "eating disorders," "substance abuse," "bullying," "harassment," "grooming," and "other illegal activity." § 6(1)(a)-(f). Without definitions, websites will not know what content they should censor and monitor, and they will likely err on the side of over-censoring, thus chilling protected speech.

204. *Third*, the categories of prohibited speech are too subjective to provide websites with notice of what speech they are required to monitor and censor. For instance, what "promotes" or "facilitates" substance abuse or bullying is a highly subjective question on which people of reasonable minds will differ. This vagueness will give the State too much discretion and will lead to arbitrary and discriminatory enforcement. *Williams*, 553 U.S. at 304. And websites will likely err on the side of caution, censoring more protected speech.

205. Unless declared invalid and enjoined, the Act's monitoring-and-censorship requirements, § 6, will unlawfully deprive Plaintiff's members and Internet users of their fundamental First Amendment rights and will irreparably harm Plaintiff, its members, and Internet users.

COUNT VII
42 U.S.C. § 1983
FEDERAL STATUTORY PREEMPTION UNDER 47 U.S.C. § 230, 42 U.S.C. § 1983, AND *EX PARTE YOUNG* EQUITABLE CAUSE OF ACTION
(MONITORING AND CENSORSHIP – MISSISSIPPI HB1126 § 6)

206. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

207. Plaintiff may assert federal preemption under 42 U.S.C. § 1983 and *Ex parte Young*, 209 U.S. 123 (1908).

208. Federal law in 47 U.S.C. § 230 preempts the Act's monitoring-and-censorship requirements, § 6, and any resulting liability under the Act.

209. Covered websites (including NetChoice members) are "interactive computer services," 47 U.S.C. § 230(f)(2), that disseminate "information provided by another information content provider," *id.* § 230(c)(1).

210. Congress enacted Section 230 to provide all websites with protections from liability for the user-generated speech on their websites: "No 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." *Id.* Section 230 also protects websites from state-imposed limits on their ability to remove or restrict user-submitted content. *Id.* § 230(c)(2). To eliminate any doubt, Section 230 expressly preempts state laws to the contrary. *Id.* § 230(e)(3).

211. Section 230 protects websites' "decisions relating to *the monitoring, screening, and deletion of content* from its network—actions quintessentially related to a publisher's role." *A.B. v. Salesforce, Inc.*, 123 F.4th 788, 798 (5th Cir. 2024) (quoting *Doe v. MySpace, Inc.*, 528 F.3d 413, 420 (5th Cir. 2008) (emphasis added)). In addition, "acts of arranging and sorting content are integral to the function of publishing." *M.P. by & through Pinckney v. Meta Platforms Inc.*, 127 F.4th 516, 526 (4th Cir. 2025).

212. Section 230 protects websites from liability for "failing to moderate content or any other functions traditionally associated with a publisher's role." *Salesforce*, 123 F.4th at 798; *id.* ("monitoring, screening, and deletion of content from its network are actions quintessentially related to a publisher's role").

213. The Act's monitoring-and-censorship requirements are "inconsistent" with Section 230(c)(1) because they would permit lawsuits and impose liability on covered websites for failing

to monitor, screen, filter, or otherwise censor third-party content. 47 U.S.C. § 230(e)(3). Moreover, to the extent Defendant pursues enforcement based on websites publishing speech prohibited by the Act that is generated by users, that enforcement would unlawfully "treat[]" websites "as the publisher or speaker of [] information provided by another information content provider." *Id.* § 230(c)(1).

214. That is why the Western District of Texas declared a similar set of monitoring-and-censorship requirements preempted under Section 230. *CCIA*, 747 F. Supp. 3d at 1042-43.

215. Unless declared preempted, the Act's monitoring-and-censorship requirements, § 6, will irreparably harm Plaintiff, its members, and Internet users.

COUNT VIII
EQUITABLE RELIEF

216. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

217. The Act as a whole (§§ 1-8) and the individual challenged provisions of the Act violate federal law and deprive Plaintiff, its members, and its members' users of enforceable federal rights. Federal courts have the power to enjoin unlawful actions by state officials. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326 (2015).

218. This Court can and should exercise its equitable power to enter an injunction prohibiting Defendant from enforcing the Act and all the challenged provisions of the Act.

COUNT IX
42 U.S.C. § 1983 AND 28 U.S.C. § 2201
DECLARATORY RELIEF

219. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

220. The Act, §§ 1-8, violates the First Amendment and the Due Process Clause of the Fourteenth Amendment to the Constitution and thereby deprives Plaintiff, its covered members, and Internet users of enforceable rights. The Act is unlawful and unenforceable because the entire

Act relies on an unconstitutional central coverage definition of covered "digital service provider[s]." § 3(1).

221. Sections 3, 4, and 6 of the Act are unlawful and unenforceable, together and separately, because they violate the First Amendment to the Constitution and thereby deprive Plaintiff, its covered members, and Internet users of enforceable rights.

222. Sections 3 and 6 of the Act are unlawful and unenforceable because they are unconstitutionally vague in violation of the First Amendment and the Due Process Clause of the Fourteenth Amendment to the Constitution and thereby deprive Plaintiff, its covered members, and Internet users of enforceable rights.

223. Section 6 of the Act is unlawful and unenforceable because it is preempted by federal law.

224. The unlawful portions of the Act are not severable from the rest of the Act. The entire Act, §§ 1-8, is therefore unlawful and unenforceable.

225. With exceptions not relevant here, in any "case of actual controversy within [their] jurisdiction," federal courts have the power to "declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a).

226. This Court can and should exercise its equitable power to enter a declaration that the entire Act is unconstitutional and otherwise unlawful.

227. This Court can and should exercise its equitable power to enter a declaration that each of the Act's challenged provisions is unconstitutional and otherwise unlawful.

PRAYER FOR RELIEF

Plaintiff requests an order and judgment:

a. declaring that Mississippi House Bill 1126 §§ 1-8 are unlawful, both facially and as applied to regulated NetChoice members;

b. declaring that Mississippi House Bill 1126 §§ 1-8 violate the First Amendment to the Constitution, as incorporated against the States by the Fourteenth Amendment, both facially and as applied to regulated NetChoice members;

c. declaring that Mississippi House Bill 1126 §§ 1-8 are void for vagueness under the First Amendment, as incorporated against the States by the Fourteenth Amendment, and the Due Process Clause of the Fourteenth Amendment to the Constitution;

d. declaring that Mississippi House Bill 1126 §§ 3, 4, and 6 violate the First Amendment to the Constitution, as incorporated against the States by the Fourteenth Amendment, both facially and as applied to regulated NetChoice members;

e. declaring that Mississippi House Bill 1126 §§ 3 and 6 are void for vagueness in violation of the First Amendment, as incorporated against the States by the Fourteenth Amendment, and the Due Process Clause of the Fourteenth Amendment to the Constitution.

f. declaring that Mississippi House Bill 1126 § 6 is preempted by federal law, both facially and as applied to regulated NetChoice members;

g. enjoining Defendant and her agents, employees, and all persons acting under her direction or control from taking any action to enforce the Act or the challenged portions of the Act, including against NetChoice members;

h. entering judgment in favor of Plaintiff;

i. awarding Plaintiff its attorneys' fees and costs incurred in bringing this action, including attorneys' fees and costs under 42 U.S.C. § 1988(b) for successful 42 U.S.C. § 1983 claims against state officials; and

j. awarding Plaintiff all other such relief as the Court deems proper and just.

Dated: May 5, 2025

Respectfully submitted,

/s/ J. William Manuel

J. William Manuel (MBN. 9891)
Stephen L. Thomas (MBN 8309)
BRADLEY ARANT BOULT CUMMINGS LLP
One Jackson Place
188 E. Capitol Street, Suite 1000
Jackson, MS 39201
Telephone: (601) 948-8000
Facsimile: (601) 948-3000
wmanuel@bradley.com
sthomas@bradley.com

Jared B Magnuson*
LEHOTSKY KELLER COHN LLP
3280 Peachtree Road NE
Atlanta, GA 30305
(512) 693-8350
jared@lkcfirm.com

Joshua P. Morrow*
LEHOTSKY KELLER COHN LLP
408 W. 11th Street, 5th Floor
Austin, TX 78701
(512) 693-8350
josh@lkcfirm.com

Steven P. Lehotsky*
Scott A. Keller*
Jeremy Evan Maltz*
LEHOTSKY KELLER COHN LLP
200 Massachusetts Avenue, NW, Suite 700
Washington, DC 20001
(512) 693-8350
steve@lkcfirm.com
scott@lkcfirm.com
jeremy@lkcfirm.com

**admitted pro hac vice*

Attorneys for Plaintiff NetChoice, LLC

Appendix 9.a

Exhibit 3 –

Declaration of Alexandra N. Veitch

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

NETCHOICE, LLC, *Plaintiff*, v. LYNN FITCH, in her official capacity as Attorney General of Mississippi, *Defendant*.	Civil Action No. _____

DECLARATION OF ALEXANDRA N. VEITCH IN SUPPORT OF PLAINTIFF NETCHOICE'S MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

I, Alexandra N. Veitch, declare as follows:

1. I am the Director of Public Policy for the Americas at YouTube. As part of my role, I lead a team that monitors and assesses the U.S. legislative and regulatory landscape, including policy proposals and legislation, such as the Mississippi House Bill 1126 ("Act") that would affect YouTube's ability to provide services and content to users in Mississippi—and perhaps world-wide.[1] My team also leads external advocacy for YouTube's policies and practices with government leaders and policy stakeholders, advises the company on public policy issues as it relates to online, user-generated content, and represents the company in public policy forums, across a broad region.

2. I submit this declaration in support of Plaintiff's Motion for Preliminary Injunction. I am over the age of 18 and am competent to make the statements herein. I have personal knowledge of the facts set forth in this declaration and, if called and sworn as a witness, could and would competently testify to them.

3. YouTube is an online service that allows users to create, upload, and share videos with others around the world. YouTube strives to be a community that fosters self-expression on an array of topics as diverse as its user base, and to nurture a thriving creative and informational ecosystem. As a result, YouTube has a wealth of highly valuable and enriching user-generated content, providing users with a wide array of news, educational content, and entertainment.

4. YouTube is owned and operated by Google LLC, which is a member of NetChoice, LLC. People in Mississippi use YouTube's services.

[1] I understand that the Act may distinguish between "user[s]" and "account holder[s]." *See* Act §§ 2(b), 3 ("user"); 4(2) ("account holder"). Unless necessary to distinguish between the two for potential compliance purposes, this declaration will use the term "user" to encompass both statutory terms.

5. I understand that Google and YouTube are likely subject to the Act, as one or both (1) meet the definition of "digital service provider" that own and operate a "digital service"; and (2) seem to otherwise qualify under Section 3 of the Act. *See* Act §§ 2(a)-(b), 3.

I. YouTube's Principled Approach to Minors and Responsibility

6. On YouTube, "[c]hildren and teenagers today can access a world of possibilities": "Whether it's exploring important topics around the world or looking up a video to help with algebra homework, they've never known a reality without this world at their fingertips." Neal Mohan, *YouTube's Principled Approach for Children and Teenagers*, YouTube Official Blog (Oct. 16, 2023), https://perma.cc/KZU8-N2S6. We believe that "[f]amilies everywhere deserve the same safe, high quality experience online, no matter where they live. And all children and teenagers ought to have the same access to the opportunities the internet provides." *Id.*

7. YouTube has invested, and continues to invest, immense resources in developing and fostering age-appropriate services, features, and policies, making age-appropriate user-generated content accessible for its users. Five principles guide YouTube's approach to minors:

- "The privacy, physical safety, mental health, and wellbeing of children and teenagers require special protections online";
- "Parents and caregivers play an important role in setting the rules for their family's online experiences, particularly for the youngest children";
- "All children and teenagers deserve free access to high-quality and age appropriate content that meets their individual interests and needs";
- "The developmental needs of children differ greatly from those of teenagers and should be reflected in their online experiences"; and
- "With appropriate safeguards, innovative technologies can benefit children and teenagers."

Id.

8. Our Youth Principles are just one part of the work we do to foster a vibrant, safer, and open community for users. To successfully support this community, YouTube must constantly balance disseminating a wide range of user-generated content against addressing objectionable and

harmful speech. On one hand, the Internet is a force for creativity, learning, and access to information. The world is a better place when we listen, share, and build community through our stories. We strive to empower users to access, create, and share information. We believe that a free flow of ideas fosters opportunity, community, and learning, and enables diverse and authentic voices to break through.

9. But on the other hand, an open Internet poses challenges. Bad actors exploit the Internet, including YouTube, for their own personal gain or for purposes of causing harm, even as we invest in the policies and systems to stop and deter them. Objectionable and harmful content on our website also makes YouTube less open, not more, by creating a space where creators and users may not feel safe to share, learn, and experience. We believe that, in order to have and protect openness, a service should attempt to strike the right balance between fostering freedom of expression and decreasing the likelihood that users will encounter harmful user-generated content on our service.

10. Consequently, working to keep harmful and illegal content off our services is core to the work of many different teams across Google and YouTube. When it comes to the information and user-generated content on our services, we discharge that responsibility based on clear, transparent policies and processes.

A. YouTube's Age-Appropriate Experiences and Policies for Minors

11. YouTube has long invested in research, policies, and practices to offer age-appropriate ways for minors to explore, learn, and participate in the online world. Such efforts are designed with consideration of our youngest users' wellbeing. We also provide tools and guidance that offer families flexibility to choose the right experience for them, enabling them to create healthy and positive digital habits at home and in school. We believe that appropriate safeguards can empower young people and help them learn, grow, and prepare for the future. Accordingly,

we (1) invest in age-appropriate services and features that align with children's and teens' developmental stages and needs; (2) offer tools that give families flexibility to manage their relationships with technology; (3) implement policies, protections, and programs that aim to increase online safety for children and teens; and (4) provide resources that teach the fundamentals of digital citizenship and media literacy to allow for confident, safer online exploration.

12. We also prioritize making robust resources and guides available for children, teens, and their parents so they can better understand YouTube's services. *E.g.*, YouTube Help, Understand Your Choices as a Family, https://perma.cc/E6YF-K62N; YouTube Help, What is a Supervised Experience on YouTube?, https://perma.cc/L2TQ-YMJ5 ("YouTube Help, What is a Supervised Experience").

13. Users known to be under the age of 13 are required to have their parent's consent to their having an account. Further, the parent's account remains linked to their child's account so that they can help manage their child's YouTube experience. When a parent sets up a child's Google Account, the parent is given the option to either allow the child to access only YouTube Kids (a standalone service described in detail below) or set up a "Supervised Experience" on YouTube. YouTube offers varying content levels and features that are meant to align with kids' and teens' developmental stages and give families tools to supervise children's use of the website. Developed in partnership with child development experts, these services and experiences reach more than 100 million active viewers worldwide every month:

a. **YouTube Kids:** YouTube's standalone service "YouTube Kids" is a filtered version of YouTube built specifically to let children under the age of 13 explore age-appropriate content, with additional tools for parents and caregivers to moderate the content children see. YouTube Kids, Safer Experience, https://perma.cc/68SL-RRAS. YouTube Kids

features a carefully curated selection of "content that is age-appropriate, adheres to our quality principles, and is diverse enough to meet the varied interests of kids globally." *Id.* YouTube works "with a variety of external specialists in child development, children's media, and digital learning and citizenship" to determine what content should be available on YouTube Kids. *Id.* As a result, kids have access to a broad range of high-quality content. *See* James Beser, *Enabling a High Quality Kids Experience & Helping Kids Creators Thrive on YouTube*, YouTube Official Blog (Dec. 16, 2022), https://perma.cc/YW36-SC9U ("Beser, *Enabling a High Quality Kids Experience & Helping Kids Creators Thrive on YouTube*"). In addition to other tools discussed below, our built-in timer in YouTube Kids lets parents or caregivers, at their discretion, "limit screen time by telling kids when it is time to stop watching." *See* YouTube for Families Help, Limit Screen Time on YouTube Kids, https://perma.cc/4XXJ-U7S5. "The timer will display a friendly alert and stop the app when the session is over" so that parents or caregivers do not have to. *Id.*

b. **Supervised Accounts:** YouTube also provides "supervised accounts" that are linked to parents' accounts for children (up to the relevant age of consent) whose parents decide their children are ready to explore some of YouTube's vast universe of user-generated content. In these parent-managed accounts, and at the parent or caregiver's discretion, "parents [can] select a content setting that limits the videos and music [their] children under 13 can find and play." YouTube Help, What is a Supervised Experience. For example, parents can, among other things, (1) "block specific channels"; (2) change their minor child's permissible "content level settings," including "Explore" (generally for viewers 9+), "Explore More" (generally for viewers 13+), and "Most of YouTube" (almost all videos on YouTube except for videos marked only for adults or otherwise not appropriate);

and (3) review, pause, and clear their "child's watch history." YouTube Help, Parental Controls & Settings for Supervised Experiences on YouTube, https://perma.cc/6AVN-AJSY. "Supervised accounts also change the features they can use, the default account settings, and the ads they see." YouTube Help, What is a Supervised Experience. For instance, functionalities like creating content and posting content are disabled on the Supervised Experience. *Id.* Further, when parents create a Google Account for their child with Family Link and use YouTube's Supervised Experience, parents and caregivers can set screen time limits on their Android device or Chromebook. Parents and caregivers can set their child's Android device or Chromebook to lock after the child has used it for a certain amount of time or when the parents or caregivers think their child needs downtime. Parents set up their own accounts to serve as managing accounts. YouTube for Families Help, Get Started with Supervised Accounts, https://perma.cc/D8DL-TC76.

14. YouTube also offers a suite of digital wellbeing tools that encourage children and teens to be mindful of their screen time. These include:

a. **Autoplay:** YouTube's autoplay feature is turned off by default for all users we know to be under 18 across all of YouTube's services, and parents or caregivers can choose to disable autoplay on YouTube Kids and YouTube's Supervised Experiences. YouTube Help, Autoplay Videos, https://perma.cc/KL2H-2C2V.

b. **Recommendations on YouTube for Teens:** We have worked to refine our recommendation systems so that teens on YouTube are not overly exposed to user-generated content that, while perhaps acceptable as a single video, could be considered differently if viewed in high quantities. Through consultation with our Youth & Families Advisory Committee and with input from academic research, we "define[d] categories of videos that are

innocuous in a single view, but that could be problematic if viewed in repetition for some young viewers" which "include content that": (1) "Compares physical features and idealizes some types over others"; (2) "Idealizes specific fitness levels or body weights"; and (3) "Features social aggression (non-contact fights and intimidation)." YouTube, Building Content Recommendations to Meet the Unique Needs of Teens and Tweens at 3, https://perma.cc/KYE7-6UUK. We have implemented guardrails for teens to limit repeated recommendations of videos related to these topics.

c. **"Take a Break" Reminders:** These reminders pause a video until a user dismisses or resumes playing the video. This feature is turned on by default for all users we know to be under 18 across all of YouTube's services, including on Supervised Experiences. YouTube Help, Take a Break Reminder, https://perma.cc/9HU7-WAES.

d. **Bedtime Reminders:** Users can set a specific time to receive a reminder to stop watching YouTube and go to bed. This reminder is turned on by default for all users we know to be under 18 across all of YouTube's services, including on Supervised Experiences. YouTube Help, Set a Bedtime Reminder, https://perma.cc/4KVJ-3V4F.

B. Partnerships With Experts

15. YouTube has ongoing partnerships with independent experts in fields such as child development, emerging media, and digital wellbeing. For example, we have created a set of best practices for kids and family content. *See, e.g.*, YouTube Help, Best Practices for Kids & Family Content, https://perma.cc/37V9-NYQN. These best practices help guide creators to create quality content that supports child development and wellbeing by promoting things like respect, healthy habits, learning and curiosity, and play and imagination. Beser, *Enabling a High Quality Kids Experience & Helping Kids Creators Thrive on YouTube*. They also help determine which content is recommended in the main YouTube experience and is included in YouTube Kids. Last year,

YouTube updated our Community Guidelines to update our approach to eating-disorder related content, including by limiting the visibility of certain content to adults. Dr. Garth Graham, *An Updated Approach to Eating Disorder-Related Content*, YouTube Official Blog (Apr. 18, 2023), https://perma.cc/44CX-5Q3M ("Dr. Graham, *An Updated Approach*"). This change was informed by independent experts such as the National Eating Disorder Association. YouTube's Youth and Family Advisory Committee also advises YouTube on the developmental stages of teens and how content consumed online can affect their wellbeing. James Beser, *Continued Support for Teen Wellbeing and Mental Health on YouTube*, YouTube Official Blog (Nov. 2, 2023), https://perma.cc/QB7K-P9JX.

C. YouTube's Minor-Specific Content and Safety Policies

16. YouTube strives to provide positive online experiences for our users, and that is especially true for children and teens. Over the years, we have developed a robust set of policies and enforcement mechanisms to ensure that YouTube remains a welcoming community for our users. For minors specifically, that might require limiting their access to certain user-generated content—in addition to developing different services that better strive to reflect minors' needs.

17. YouTube has always maintained a set of Community Guidelines that outline categories of content that are prohibited on YouTube. These Guidelines apply to all types of content on our services, including videos, comments, links, thumbnails, video descriptions, stories, posts, live streams, playlists, external links contained in uploaded content (including clickable URLs or verbal directions to users to visit other sites), and any other user-generated content. Our Community Guidelines are a key part of our broader suite of policies, and we regularly update them to keep pace with emerging challenges. *See* YouTube, Community Guidelines,

https://perma.cc/KL4Z-TUSN. Our policies for prohibited or restricted content address a variety of issues, including:

a. **Age-Restricted Content:** We age-restrict user-generated content that might not violate our Community Guidelines but that would otherwise be inappropriate for minors. These include categories of content such as (1) "nudity and sexually suggestive content"; (2) content that depicts "adults participating in dangerous activities that minors could easily imitate"; (3) "violent or graphic content"; and (4) "vulgar language." YouTube Help, Age-Restricted Content, https://perma.cc/V36F-LLSE. Age-restricted videos are not viewable to users who are known to be under 18 or any signed-out user.

b. **Child Safety:** YouTube has a standalone "Child Safety Policy" that prohibits "[s]exually explicit content featuring minors and content that sexually exploits minors." YouTube Help, Child Safety Policy, https://perma.cc/8LQR-3GNN ("YouTube's Child Safety Policy"). We report content on YouTube that contains child sexual abuse material to the National Center for Missing and Exploited Children. *Id.* This policy also prohibits content: (1) showing a minor participating in "harmful or dangerous acts"; (2) that could encourage minors to participate in dangerous activities; (3) showing any infliction of physical, emotional, or sexual abuse on a child; or (4) cyberbullying and harassment involving minors. *Id.* The Child Safety Policy also prohibits content that targets minors and families, but contains problematic content including, but not limited to, sexual themes, violence, and other inappropriate themes intended to shock young audiences. *Id.*

D. YouTube's General Content-Moderation Policies

18. I understand that the Act requires YouTube to "develop and implement a strategy to prevent or mitigate the known minor's exposure to harmful material," defined separately by Mississippi law, "and other content that promotes or facilitates the following harms to minors:

(a) Consistent with evidence-informed medical information, the following: self-harm, eating disorders, substance use disorders, and suicidal behaviors; (b) Patterns of use that indicate or encourage substance abuse or use of illegal drugs; (c) Stalking, physical violence, online bullying, or harassment; (d) Grooming, trafficking, child pornography, or other sexual exploitation or abuse; (e) Incitement of violence; or (f) Any other illegal activity." Act § 6(1).

19. YouTube already has in place robust policies to moderate objectionable and harmful content, including content identified in the Act. Specifically:

a. "Harmful Material": YouTube prohibits "[e]xplicit content meant to be sexually gratifying." YouTube Help, Nudity & Sextual Content Policy, https://perma.cc/GX5D-MWBY. Under this policy, users may not post, for instance, (1) the "depiction of clothed or unclothed genitals, breasts, or buttocks that are meant for sexual gratification"; and (2) "[p]ornography, the depiction of sexual acts, or fetishes that are meant for sexual gratification." *Id.*

b. Self-Harm, Eating Disorders, Substance Use Disorders, and Suicidal Behaviors: YouTube prohibits "content on YouTube that promotes suicide, self-harm, or eating disorders, that is intended to shock or disgust, or that poses a considerable risk to viewers." YouTube Help, Suicide, Self-Harm, and Eating Disorders Policy, https://perma.cc/AB93-9ETP. Any content that is related to suicide, self-harm, or eating disorders and that is targeted to minors or encourages minors to participate in suicide or self-harm is strictly prohibited on YouTube. *Id.*

c. Substance Abuse or Use Of Illegal Drugs: YouTube prohibits (1) "non-educational" "displays of hard drug uses"; (2) "making hard drugs"; (3) "minors using alcohol or drugs"; and (4) "selling or facilitating the sale of hard or soft drugs." YouTube Help,

Illegal or Regulated Goods or Services Policies, https://perma.cc/8Y4Y-SA4P (capitalization altered). Additionally, YouTube prohibits expression "aim[ed] to directly sell, link to, or facilitate access to" "alcohol," "controlled narcotics and other drugs," "nicotine, including vaping products," and "pharmaceuticals without a prescription." *Id.* (capitalization altered). YouTube prohibits expression "[s]howing minors involved in dangerous activities," including "using a controlled substance like alcohol or nicotine." YouTube's Child Safety Policy.

d. Stalking, Physical Violence, Online Bullying, or Harassment: YouTube's "Harassment & Cyberbullying Policies" prohibits expression "that threatens an identifiable individual or their property" and targets an individual with "prolonged insults or slurs based on [the individual's] intrinsic attributes." YouTube Help, Harassment & Cyberbullying Policies, https://perma.cc/8LHC-72M3. YouTube prohibits any content that intends to "shame, deceive or insult a minor," "[r]eveals personal information" about a minor, "[c]ontains sexualization" of a minor, or "[e]ncourages others to bully or harass" a minor. YouTube's Child Safety Policy (capitalization altered).

e. Grooming, Trafficking, Child Pornography, Or Other Sexual Exploitation or Abuse: YouTube has a "Child Safety Policy" that prohibits "[s]exually explicit content featuring minors and content that sexually exploits minors," including "[s]exualization of minors." YouTube's Child Safety Policy. Any content on YouTube that contains child sexual abuse material ("CSAM") is reported to the National Center for Missing and Exploited Children ("NCMEC"). *Id.* We also report instances of grooming when we are aware there is an exigent threat to a minor.

f. Incitement of Violence: YouTube's "Violent or Graphic Content Policies" prohibit content that "[i]ncit[es] others to commit violent acts against individuals or a defined group of people." YouTube Help, Violent or Graphic Content Policies, https://perma.cc/Z2QZ-K69L ("YouTube's Violent or Graphic Content Policies").

g. Any Other Illegal Activity: In addition to the content featuring or potentially promoting or facilitating illegal activity encompassed by the policies described above, YouTube has additional policies prohibiting yet more content featuring illegal activity like its Spam, Deceptive Practices, and Scams Policies. *See* YouTube Help, Spam, Deceptive Practices, and Scams Policies, https://perma.cc/FA7K-C4SE.

20. YouTube's policies go further than the Act's requirements and protect users by prohibiting hate speech and violent extremist or criminal organization content, among other things. YouTube forbids any content that promotes violence or hatred against individuals based on protected attributes, including: age, caste, disability, ethnicity, gender identity and expression, nationality, race, immigration status, religion, sex/gender, sexual orientation, victims of a major violent event and their kin, and veteran status. YouTube Help, Hate Speech Policy, https://perma.cc/HKK8-6A5K. Similarly, any content that praises, promotes, or aids violent extremist or criminal organizations is prohibited. YouTube Help, Violent Extremist or Criminal Organizations Policy, https://perma.cc/XMM5-BT7U. And violent or gory content intended to shock or disgust viewers or content that encourages others to commit violent acts are not allowed on YouTube. *See* YouTube's Violent or Graphic Content Policies.

21. YouTube has also developed policies around "educational, documentary, scientific, and artistic content" (EDSA), dealing with topics that might otherwise violate our Community Guidelines. Michael Grosack, *A Look at How We Treat Educational, Documentary, Scientific, and*

Artistic Content on YouTube, YouTube Official Blog (Sept. 17, 2020), https://perma.cc/JTL2-VN5F. Decisions about whether a piece of content qualifies for an EDSA exception "are nuanced and context is important." *Id.* As an example, YouTube "do[es] not allow content targeting minors with insults or bullying, but [YouTube] may allow content that shows this as part of an educational anti-bullying campaign provided the minors are actors or their identity [is] hidden." *Id.* "EDSA exceptions are a critical way we make sure that important speech stays on YouTube, while protecting the wider YouTube ecosystem from harmful content." *Id.*; *see* YouTube Help, How YouTube Evaluates Educational, Documentary, Scientific and Artistic (EDSA) Content, https://perma.cc/6DU7-2FJ4.

22. YouTube has billions of monthly logged-in users, and over 500 hours of content are uploaded every minute by an extraordinarily diverse community of creators, who span more than 100 countries and 80 languages. On a daily basis, users watch more than a billion hours of video on YouTube and generate billions of views. *See* YouTube for Press, YouTube Official Blog, https://perma.cc/42R7-D42M.

23. YouTube has developed robust means of addressing user-generated content that violates our policies. YouTube relies on a mix of human and automated effort to detect violative content and remove it. YouTube's first line of defense is automated systems that are trained with machine learning and/or incorporate hash-matching technology to quickly identify and take action against violative content. YouTube also relies on global teams to review flagged content and remove it, restrict who can view it, or leave the content on the site if it does not violate any policies. YouTube employs expert teams around the world to investigate sophisticated bad actors who are adept at circumventing automated defenses. YouTube, Information Quality & Content Moderation at 12, https://perma.cc/J7LR-8824. Importantly, any effort to expand detection by relying more on

automated systems increases the risk of "false positives" or removing content that does not actually violate YouTube's policies. Relying too heavily on automatic detection also risks diverting the attention of YouTube's Trust and Safety team to content that might be innocuous, allowing bad actors to avoid detection. Thus, content moderation is human-resource intensive, even for CSAM and known violative content. YouTube verifies with human review all CSAM hashes to confirm that they are CSAM before they are reported to NCMEC. And human review becomes even more time-intensive and important for other illegal conduct like "grooming" or trafficking that requires more context to understand if illegal activity is taking place.

24. While no system of reviewing such a high volume of content is foolproof, YouTube expends great effort and resources in removing objectionable and harmful user-generated content before most users see it. In fact, the vast majority of violative videos are seen by fewer than 10 people before they are removed. In the first quarter of 2024, approximately 57.53% of removed videos had no views before they were removed, and approximately 25.18% had between 1-10 views. *See* Google, YouTube Community Guidelines Enforcement Report – Removals, https://perma.cc/PF4S-55PU ("Google, Community Guidelines Enforcement Report – Removals"). Over that same period, YouTube removed 8,295,304 videos. *Id.* YouTube has also created a metric for determining what percentage of views on YouTube comes from content that violates our policies. This metric, known as the Violative View Rate (VVR), helps us measure our responsibility work. *See* Google, YouTube Community Guidelines Enforcement Report – Views, https://perma.cc/DZ5E-3Z3Z. YouTube's VVR is calculated by taking a sample of viewed videos to a team for review. The team then determines which videos in the sample violate our policies, and YouTube uses these decisions to estimate a VVR. *Id.* In the first quarter of 2024, YouTube estimated a 0.12-0.13% VVR. *Id.* This means that out of every 10,000 views on YouTube, 12-13

come from violative content. This is down by more than 81% when compared to the final quarter of 2017 (when our teams started tracking this metric), in large part thanks to our investments in robust content moderation, including automated technologies and human review.

25. Our practices also involve taking action against users and channels that continue to upload violative content. A YouTube channel is terminated if it accrues three Community Guidelines strikes in 90 days, has a single case of severe abuse (such as predatory behavior), or is determined to be wholly dedicated to violating our guidelines (as is often the case with spam accounts). When a channel is terminated, all of its videos are removed. In the first quarter of 2024, YouTube terminated 15,799,880 total channels. *See* Google, Community Guidelines Enforcement Report – Removals. The majority of channel terminations are a result of accounts being dedicated to spam (96%) or adult sexual content (1%) in violation of our guidelines. *Id.*

26. Our efforts are not limited to removing objectionable and harmful user-generated content in the videos uploaded on our site. They also extend to user-generated comments. In the first quarter of 2024, YouTube removed approximately 1,443,821,162 comments. *Id.* Approximately 99.7% percent of comments removed are first detected by YouTube's automatic flagging system, and the majority of actions taken against comments (83.9%) are for spam. *Id.*

27. Enforcing our policies takes a tremendous amount of effort. YouTube's global teams work continually to remove user-generated content from YouTube that violates our policies. We endeavor to give our teams visibility into emerging issues before they reach, or become widespread on, our website. That valuable visibility is driven by our Intelligence Desk, a team within YouTube's Trust & Safety organization. These specialized analysts identify trends and the risks they pose. They also regularly monitor ongoing threats, both tracking their prevalence across

media and evaluating how they morph over time. Our teams also work to provide appropriate age restrictions and other appropriate warnings on content.

28. Given the open nature and scale of YouTube and because bad actors are constantly refining how they attempt to evade detection, detecting violative user-generated content cannot be done with perfect accuracy or upon the moment of upload. YouTube, Information Quality & Content Moderation at 12. Nevertheless, YouTube continuously works to combat new challenges and bad actors through a multi-faceted and nuanced approach to exercising its discretion in setting its content-moderation policies, working to distinguish among content that is truly objectionable or harmful, borderline content (which is content that comes close to violating, but does not quite violate our Community Guidelines), and content that contributes positively to the YouTube community. To that end, we have a diverse set of means to help us keep our community safe, including: (1) appending warning interstitials for sensitive content; (2) surfacing helpful resources for crisis management; and (3) suspending and/or terminating channels or accounts. YouTube also encourages creators to age-restrict content when appropriate. The YouTube Team, *Using Technology to More Consistently Apply Age Restrictions*, YouTube Official Blog (Sept. 22, 2020), https://perma.cc/7HYF-KSXQ. We apply age restrictions on content ourselves, when needed. We have other tools to help us provide authoritative information on our service—such as the use of information panels to show basic background information, sourced from independent, third-party partners, that give more context on a topic. For example, in partnership with third-party expert organizations and global experts in the space, we expanded our crisis resource panels to introduce a "pause" page for queries related to suicide, self-harm, and eating-disorder topics that provides users with options with how to proceed before they are able to see search results related to these topics. These include selecting to contact third-party crisis resource hotline partners for support or

searching for various self-help tools. We further prioritize the recommendations of authoritative content and limit the spread of borderline content to users through recommendations. Because removing content is only one way of managing content, YouTube has developed and invested in this diverse set of tools that are essential in balancing free expression and responsibility on our website. Simply put, these tools provide additional information and options compared to simply removing (or not removing) user-generated content from our website.

II. YouTube's Compliance Obligations Under the Act

29. Google and YouTube support regulations designed to protect the wellbeing of minors online while ensuring that users' rights to access speech are not impeded. *See generally* Google, Legislative Framework to Protect Children and Teens Online, https://perma.cc/ZC4D-WGVL ("Google, Legislative Framework"). But the Act here is not well-suited to protect minors. It fails to take into account differences among online services, fails to take into account the differences among minors at different developmental levels, and ultimately will only impede minors' access to valuable speech online. Furthermore, it will discourage and stymie innovation that makes YouTube's services better for all.

30. The Act would also require YouTube to redefine how its services work, and it fundamentally burdens and undermines YouTube's ability to operate responsibly, enforce important policies, and innovate and improve its services. Moreover, compliance with the Act would be enormously difficult and burdensome, requiring large upfront investments and continuing maintenance in terms of time, engineering, and operations resources. That is especially true because this law was passed on April 30, 2024, with a July 1, 2024 effective date—giving us only two months to develop the complex systems necessary to comply with the Act. Independently and in combination, therefore, compliance with the Act's provisions would make it much more difficult for

YouTube to offer its services to those in Mississippi. Below are examples of the burdens the Act would impose.

A. Age Verification (Act § 4(1))

31. I understand that the Act provides that a "digital service provider shall make commercially reasonable efforts to verify the age of the person creating an account with a level of certainty appropriate to the risks that arise from the information management practices of the digital service provider." Act § 4(1). The Act does not define or explain "level of certainty appropriate to the risks that arise from the information management practices of the digital service provider."

32. As I understand this provision, it may require YouTube to verify the ages of all users when those users are creating their accounts. It thus may not require YouTube to verify the ages of existing account holders, though the parental-consent requirement (discussed below) may essentially require age verification of all users regardless. Given the lack of clarity regarding what level of certainty would be appropriate and the lack of a meaningful safe harbor with respect to age verification, businesses will be incentivized or even compelled to resort to more intrusive methods of age verification—such as using facial recognition matching against government-issued IDs before any user can create an account—to protect themselves against potential liability.

33. Developing and maintaining systems to verify the ages of teenagers to the level of certainty that could be required by the Act is highly complex, human-resource intensive, and time consuming—resulting in unrecoverable compliance costs. Additionally, as we have publicly stated, age verification also "require[es] more data collection and use." Google, Legislative Framework at 2. Although difficult to estimate with certainty, YouTube will need to dedicate budget, engineering resources, and other staff investment to address this provision. And to come into compliance with this provision, YouTube would need to start developing its means of compliance now.

34. Age-verification also harms Mississippians, as many YouTube users in Mississippi may be unable or unwilling to provide the information or documentation necessary to prove their age to create an account. That will impede users' "access to important information and services." *Id.*

B. Parental-Consent Requirement (Act § 4(2))

35. I understand that the Act provides that a "digital service provider shall not permit an account holder who is a known minor to be an account holder unless the known minor has the express consent from a parent or guardian." Act § 4(2). I also understand that the Act enumerates certain "[a]cceptable methods of obtaining express consent of a parent or guardian," such as: "(a) Providing a form for the minor's parent or guardian to sign and return to the digital service provider by common carrier, facsimile, or electronic scan; (b) Providing a toll-free telephone number for the known minor's parent or guardian to call to consent; (c) Coordinating a call with a known minor's parent or guardian over video conferencing technology; (d) Collecting information related to the government-issued identification of the known minor's parent or guardian and deleting that information after confirming the identity of the known minor's parent or guardian; (e) Allowing the known minor's parent or guardian to provide consent by responding to an email and taking additional steps to verify the identity of the known minor's parent or guardian; or (f) Any other commercially reasonable method of obtaining consent in light of available technology." *Id.*

36. As I understand this provision, it would require YouTube to establish that teenagers on YouTube's main service—current and prospective—have parental consent to use the service by confirming via an enumerated means listed above or another "commercially reasonable method." This provision would, of necessity, likely require age verifying all users.

37. Compliance with this provision will negatively affect users' experiences. Implementing such systems would significantly restrict, if not block entirely, access to information and services online. As we have said, legislatively mandating parental consent "could unnecessarily preclude some teens from accessing the basic benefits of the online world and have unintended effects on vulnerable youth." Google, Legislative Framework at 2. Among other reasons, this is because some teens may have parents who are incapacitated, abusive, not proficient in English, not technologically savvy, or otherwise not available.

C. Requirement to Prevent or Mitigate Minors' Exposure to Certain Content (Act § 6)

38. I understand that the Act provides, "[i]n relation to a known minor's use of a digital service, a digital service provider shall make commercially reasonable efforts to develop and implement a strategy to prevent or mitigate the known minor's exposure to harmful material," defined separately by Mississippi law as obscenity for minors, "and other content that promotes or facilitates the following harms to minors: (a) Consistent with evidence-informed medical information, the following: self-harm, eating disorders, substance use disorders, and suicidal behaviors; (b) Patterns of use that indicate or encourage substance abuse or use of illegal drugs; (c) Stalking, physical violence, online bullying, or harassment; (d) Grooming, trafficking, child pornography, or other sexual exploitation or abuse; (e) Incitement of violence; or (f) Any other illegal activity." Act § 6(1). I also understand that this provision purportedly does not "prevent or preclude: (a) Any minor from deliberately and independently searching for, or specifically requesting, content; or (b) The digital service provider or individuals on the digital service from providing resources for the prevention or mitigation of the harms described in subsection (1), including evidence-informed information and clinical resources." *Id.* § 6(2).

39. As I understand this provision, it may require alterations to YouTube's content-moderation—not because YouTube's content-moderation is currently deficient, but because of uncertainty of how the Mississippi Attorney General will interpret the Act. As explained above, YouTube has—and vigorously enforces—policies preventing minors' exposure to objectionable and harmful content, including the broad topics identified by the Act. In fact, we have publicly stated that "content policies should address and respond to risks related to content that promotes eating disorders, self-harm, or bullying." Google, Legislative Framework at 3. Yet this provision creates multiple compliance questions. For example, while YouTube has developed its own internal understandings of what, for example, "promotes . . . self-harm, eating disorders, substance use disorders, and suicidal behaviors"—and can effectively identify and address such content—YouTube has no assurance that the Mississippi Attorney General will agree. Furthermore, it is unclear whether YouTube must simply have a "strategy" in place, or whether it must engage in what the Attorney General considers perfect content moderation preventing all exposure of all prohibited content (as defined by the Attorney General) to all minors. Relatedly, it is unclear how the Act's purported safe harbor provisions for minors "deliberately and independently searching for, or specifically requesting, content" should work. As one final example, content related to "any other illegal activity" is an ambiguous provision, as it does not specify what laws are relevant. Something that may be illegal in Mississippi may be legal in Alabama or Canada. And different localities in Mississippi have different laws. As a service that operates across borders, this provision creates substantial uncertainty about what illegality YouTube must moderate. For these reasons and more, YouTube therefore cannot know whether it is currently in compliance, notwithstanding the immense resources it devotes to content moderation.

40. To ensure compliance with this provision, YouTube may need to alter its policies and enforcement to take an overinclusive approach to content moderation, resulting in unrecoverable compliance costs. For example, YouTube runs the risk of liability every time a minor sees any content that even references self-harm. Thus, the only way to avoid the Act's large penalties is to decline to disseminate all content mentioning self-harm to known minors, despite the fact that certain types of related content can aid in recovery. *See* Dr. Graham, *An Updated Approach*. Similar concerns about uncertainty apply to all of the categories of prohibited speech under the Act, with the end result that compliance with the Act may demand that YouTube cease disseminating large categories of speech. Although difficult to estimate with certainty, YouTube would need to dedicate budget, engineering resources, and other staff investment to address this provision. And to come into compliance with this provision, YouTube would need to start developing its means of compliance now.

41. That will have clear harms for users as well, who may be denied access to protected and valuable speech as a result of YouTube's overinclusive moderation.

42. In sum, if the Act takes effect on July 1, 2024, Google and YouTube will suffer irreparable harm in the form of unrecoverable compliance costs, diminished ability to provide valuable user-generated content, and ongoing regulatory uncertainty about whether its services comply with the Act's broad prohibitions. Moreover, YouTube's users may experience a degraded service that frustrates their ability to engage with the wealth of speech available on YouTube.

* * *

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed on June 4, 2024, in WASHINGTON, D.C.

DocuSigned by:
Alexandra Veitch
346A76BAA93C431...

ALEXANDRA N. VEITCH

Appendix 9.b

Exhibit 4 –

Declaration of Gautham Pai

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

NETCHOICE, LLC, *Plaintiff*, v. LYNN FITCH, in her official capacity as Attorney General of Mississippi, *Defendant*.	Civil Action No. _____

DECLARATION OF GAUTHAM PAI IN SUPPORT OF
PLAINTIFF NETCHOICE'S MOTION FOR PRELIMINARY INJUNCTION
AND TEMPORARY RESTRAINING ORDER

I, Gautham Pai, declare as follows:

1. I serve as the Head of Customer Experience at Nextdoor. For the past 7 years, I have worked at Nextdoor, overseeing the end-to-end customer experience across multiple channels, markets, and languages. My role ensures high-quality service for our extensive global community of over 90 million members and businesses. I shape and execute operational strategies to deliver exceptional support experiences while driving operational and financial success. My team collaborates cross-functionally to continuously build and enhance abuse detection mechanisms, analytics, internal moderation tools, and enforceable policies. These efforts maintain a safe and engaging platform for our users. I submit this declaration in support of Plaintiff's Motion for Preliminary Injunction. I am over the age of 18 and am competent to make the statements herein. I have personal knowledge of the facts set forth in this declaration and, if called and sworn as a witness, could and would competently testify to them.

Background information on Nextdoor & Nextdoor Users

2. Nextdoor operates website www.nextdoor.com and the Nextdoor web application (collectively known hereafter, "platform") where users around the world turn daily to receive trusted information, give and get help, get things done, and build real-world connections with those nearby — users, businesses, and public services. By fostering these connections, both online and in the real world, Nextdoor builds stronger, more vibrant, and more resilient neighborhoods. Today, nearly 90 million verified users (hereafter, "users") and 5 million businesses rely on Nextdoor in more than 325,000 neighborhoods across 11 countries. In the US, 1 in 3 households uses the network. Nextdoor is in 20.8% of households in Mississippi.

3. On Nextdoor, users are placed in a neighborhood based on their address, and they automatically receive updates from nearby users, businesses, and public services.

4. Since Nextdoor launched in 2011, Nextdoor has required individuals to register with and use their real names and addresses on the platform to foster mutual accountability and ensure that connections and conversations are authentic.

Steps Nextdoor takes to Foster a Positive On-Platform Experience

5. Nextdoor verifies with a reasonably high degree of confidence that everyone signing up on Nextdoor is a real person with a tie to the real neighborhood in which they are registering. More specifically, Nextdoor verifies individuals and businesses based on a number of signals, including device location and third-party data vendors. If Nextdoor cannot verify an individual or business through these methods, additional verification steps are taken. An individual may be verified using a postcard (mailed by Nextdoor to the individual's address, which includes a code for the user to input into the website or app). Alternatively, individuals may remain unverified (hereafter, "unverified users"), with limited functionality.

6. Nextdoor's Member Agreement[1] prohibits people from using the Services if they are a registered sex offender in any jurisdiction.

7. Nextdoor users must use their real name on Nextdoor; meaning, the first name they use when introducing themselves to users, friends and colleagues, and legal last name. Using an alias, initials, or an abbreviated version of their last name is prohibited except under limited circumstances. However, via privacy settings, users can control how their name appears to others, as well as other ways they may appear on Nextdoor in posts, search, or messages.

8. By default, users' news feeds include posts from their neighborhood and nearby neighborhoods. This disincentivizes posts that are intended to get clicks and go viral and instead

[1] https://help.nextdoor.com/s/article/Nextdoor-Member-Agreement?language=en_US

incentivizes users to keep their posts focused on ways to get and give local help and share relevant information.

9. Nextdoor also provides users with the option to view their feeds in reverse chronological order (sorted by recent activity or posts) rather than curated by feed-ranking technology.

10. Nextdoor is committed to developing leading-edge product technology that facilitates constructive neighborhood connections and conversations, and a safe experience for users online. Our active in-product features include:

a. **Kind Neighbor Pledge:** Upon joining Nextdoor, all users are asked to agree to our Kind Neighbor Pledge, which is a commitment to be helpful, treat everyone in the Nextdoor community with respect, and to do no harm. It's an opportunity to establish norms and expectations for our platform and encourage prosocial behavior.

b. **Kindness Reminder:** The Kindness Reminder appears when a user drafts and attempts to publish a post that may violate Nextdoor's Community Guidelines. The tool automatically detects potentially offensive language that may violate Nextdoor's Community Guidelines and encourages the author to edit their content before they publish. It was the first of our core product features to introduce pre-post moments of friction aimed at slowing people down and combating incivility. While the Kindness Reminder is just a reminder and not a preemptive prohibition on posting offensive content, in 2023, users who received the reminder edited or withheld their post 36% of the time.

c. **Kindness Tips:** Nextdoor Kindness Tips serve as a supportive tool to remind users who have had content previously removed about best practices for fostering constructive conversations. These tips offer five specific, actionable pieces of advice

with illustrative examples. Importantly, instead of just taking corrective action on repeat violators (such as removal from the app), Kindness Tips aims to keep users on the platform by proactively guiding users to reflect on how to engage in open and respectful discussions while aligning with our Community Guidelines.

11. Nextdoor sets clear Community Guidelines that are designed to keep interactions on the platform safe and productive. These guidelines help promote thoughtful conversations and explicitly forbid racism, discrimination, misinformation, and other types of harmful content.

12. There are three main categories of guideline-violating content:

a. **Harmful:** Content that is illegal, fraudulent, or unsafe, e.g., violent, graphic, discriminatory.

b. **Hurtful:** Content that users consider uncivil, e.g., insults, rudeness, name-calling.

c. **Other:** Non-local content, spam, content posted in error.

13. Efforts to address guideline-violating content include:

a. Tools to automatically detect and report harmful content.

b. Product features that enable users to report guideline-violating content.

c. Volunteer community moderators who monitor community discussions and help keep dialogue on the platform civil.

d. Our internal Neighborhood Operations Team of trained specialists who review content and accounts that have been flagged and take appropriate action to support the users involved.

14. We work regularly with leading experts including our Neighborhood Vitality Advisory Board[2] to refine our Community Guidelines, iterate on our features and tools, and develop strategic research teams that further our work to create and maintain a welcoming platform.

15. Our annual transparency report discusses metrics around reported content from the year prior. In our recent report, published in February 2024,[3] we disclose that in 2023:

a. The subset of content reported for being "harmful" (as defined above) was 0.29% of total user-generated content on Nextdoor.

b. Nextdoor made only six cybertip reports of suspected child sexual abuse material to National Center for Missing and Exploited Children.

c. In 2023, Nextdoor's nearly 200,000 volunteer community moderators reviewed 90% of all reported content (which constituted 1.97% of aggregate content) and removed 55% of reported content within a median time of 5.3 hours. The remaining reported content was reviewed by paid Nextdoor Operations staff or automatically removed.

Teenagers on Nextdoor

16. Nextdoor's Member Agreement requires minors to be 13 years old or older in the United States to join Nextdoor.4

17. Nextdoor estimates that approximately 99% of its U.S. users are legal adults. Further, less than 1% of its users are between the ages of 13 and 17, and less than 10% are under 25 years of age. In contrast, Nextdoor estimates that approximately 40% or more of Nextdoor users are 55 and over.

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[2] https://about.nextdoor.com/advisory-boards/#vitality
[3] https://nxdr.co/3HRRFd1
[4] https://help.nextdoor.com/s/article/Nextdoor-Member-Agreement?language=en_US

18. The overarching utility offered by Nextdoor does not, by nature, appeal to most minors. Nextdoor lacks games, cartoonish elements, minor-oriented music or activities, minor celebrities or celebrities who appeal to minors, and is not advertised to minors. It is used overwhelmingly by legal adults who are looking to connect with other nearby residents.

19. Nevertheless, Nextdoor has observed teenagers engage on Nextdoor to seek or offer after-school or summer jobs. For example, teenagers on Nextdoor have sought dog-walking or cat sitting, selling crafts, gardening, snow shoveling, tutoring, babysitting, and offering technical computer assistance to users, including a class on how to use the latest generative Artificial Intelligence technology. In fact, a recent review conducted in February 2024 indicated that 3 of the top 4 searches by verified U.S. users aged 13 to 17 involved babysitting.

Barriers to Nextdoor Imposed by Mississippi House Bill 1126

Challenges with Collecting Age.

20. Nextdoor has tested asking users for date of birth on a voluntary basis, and has observed that merely seeking the age of users in various ways is a barrier to platform access.

21. In the United States, over the three month period from February through April 2024, Nextdoor asked users to voluntarily provide their date of birth and found that only approximately 40% of users who were asked were willing to share their date of birth.

22. The voluntary date of birth collection done by Nextdoor does not involve the additional verification steps required by Mississippi HB 1126. Nextdoor expects that if additional steps to verify a user's date of birth were required, a significantly lower percentage of users would be willing to provide this information.

23. In fact, Nextdoor has received negative feedback from users regarding date of birth collection.

a. Regarding date of birth collection in general, one user said: "You do not need my birthday and I will not give it to you. Suffice it to say that when it comes to my age, all you need to know is that I am a Vietnam veteran."

b. Users who have been asked to share documentation to support their age have also shared concerns about providing personal information to Nextdoor:

   i. "After having a Nextdoor account for a decade, I accidentally hit the wrong year and was told I couldn't have access anymore because I was under 13. I have provided plenty of information to indicate otherwise and was told the ONLY way to regain access was to submit my ID, which is unreasonable since you don't require one to set up a new account. Customer service sent me on a loop with AI bots with repetitive policy explanations. Did not solve the problem. Since I can't access my account, I wish for it to be deleted."

   ii. "Are you kidding me? You think I'm gonna send you my license or any personal ID"

   iii. "App rep wants my personal info to turn my account back on after using the app for over 5 years. I think this is a scam now...."

   iv. "What?? I am over 60. There must be another way I do not have to give my actual pii info to be hacked." -"I'm 60 years old and I am not sending a copy of my driver's license to anyone."

   v. "I'm 57 years old and they're asking me for my government issued ID. This is totally insane.. I put my age down to zero because I thought it was a scam. Next-door now thinks my age is zero, so they won't reinstate my Account. Because of fraud there's no reason that anyone in Nextdoor needs my Social

> Security number or my drivers license number. They didn't have school IDs when I went to school so unfortunately I don't have one. Graduated 1983."

24. If date of birth collection and verification were required from prospective users, then Nextdoor would expect a significant number of prospective users to decline to join the platform. If date of birth collection and verification were required from current users, we would expect a significant number of users to be unable or unwilling to provide it in order to continue on the platform. The loss of current and prospective users would decrease the volume and diversity of speech available on Nextdoor, would reduce the audience that current and new users can reach, and would reduce Nextdoor's overall revenue.

25. Further, if verification of date of birth using government identification were required, we would expect even higher numbers of prospective and current users to decline to join the platform or be unable or unwilling to provide government identification, for a number of reasons.

a. First, privacy- and security-conscious individuals are likely to consider government ID to be a more sensitive piece of information than simply date of birth. Nextdoor has already seen users leave the platform when they are asked to provide their date of birth or to provide government ID.

b. Second, it is far more cumbersome to provide a photo of a government ID than to enter in a date of birth. Most people know their own birth dates from memory, but not everyone has the means to easily scan and send a photo of a government ID. And not everyone has a government ID, or an easily accessible government ID. If an individual has to seek outside assistance to verify, an individual may find verification too much work to continue.

26. If verification by a third party were required, then the number of prospective and current users willing and able to verify date of birth to join Nextdoor could further be reduced. Prospective users who are unfamiliar with Nextdoor and have yet to experience its value proposition may be unwilling to submit identity verification documentation just to try out the platform. Further, prospective and current users who trust Nextdoor with their information may be unwilling to trust an unfamiliar third party. Submission to a third-party system is an added layer of friction, which could lead to additional user frustration. If there were an error or other problem, Nextdoor Support agents may not have the information to help the user resolve the issue. This could hurt Nextdoor's image and relationship with its users.

High Cost of Document-Based Verification and Challenges Observed from Document-Based Verification Experiments.

27. Nextdoor has thus far developed an effective verification system that balances trust with friction and cost of onboarding new users. Nextdoor is not sure what is entailed in section 4 of House Bill 1126, which requires "commercially reasonable efforts to verify the age of the person creating an account with a level of certainty appropriate to the risks that arise from the information management practices of the digital service provider." However, to the extent that identity-document-based age verification is required by the government, this would cause users to face a significant barrier to accessing the platform, and Nextdoor would suffer irreparable harm due to those users forsaking the service.

28. While Nextdoor has not attempted to require document-based age verification for all users, Nextdoor does use identity-document-based verification in in one circumstance and has experimented with third-party document verification in another instance. Both circumstances placed a significant burden on Nextdoor and its users, indicating the severe challenges that would result if all users were required to provide this information just to access to Nextdoor.

29. First, Nextdoor, per its Community Guidelines, requires users to use their real name and address on the platform. On occasion, users have been reported for using either a different name than their real name, or as not residing in the Neighborhood to which they belong on platform.

30. When a user is reported for one of these reasons, the user is suspended and may be required to submit to Nextdoor identity documentation showing their real name/address. Nextdoor Support agents review the user's identity documentation and, if needed, help the user update their name/address before unsuspending the user.

31. Based on the cost of verifying a user's identity documentation in each real name/address case, if Nextdoor Support agents were required to process identity documentation for every new Mississippi user, Support agent costs would increase by approximately $200,000 per year (assuming no growth in the number of Mississippi users joining).

32. Second, Nextdoor attempted third-party verification of documents in 2020 without succcess. In 2020, Nextdoor attempted an experiment in Europe by which it offered individual verification through a third party using a utility bill. For individuals unable to verify by phone, Nextdoor gave the individual the option of submitting a utility bill to be matched by a third party vendor. Unfortunately, less than 1% of individuals verified using this method, and Nextdoor discontinued the experiment.

33. Based on Nextdoor's experiences with date of birth collection, identity-document-based verification, and third-party verification, Nextdoor expects the percentage of users able and willing to complete a Mississippi mandated "commercially reasonable efforts to verify the age of the person creating an account with a level of certainty appropriate to the risks that arise from the

information management practices of the digital service provider" to be dismally low; so low that Mississippi may be an unviable market for two reasons.

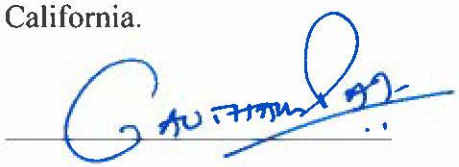
a. One, the increased costs would dwarf possible revenue on a per-user basis, making the Mississippi market as a whole cost-prohibitive.

b. Two, Nextdoor thrives on local users interacting on the platform, posting information such as local events, sharing recommendations for the best plumber, or helping each other find an escaped pet or lost keys. If a large percentage of locals do not join the platform because of the difficulties imposed by third party verification, the synergy that powers this positive ecosystem is lost, depleting the usefulness and attraction of the platform for all users.

* * *

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed on June 5, 2024, in San Francisco, California.



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Appendix 9.c

Exhibit 5 –

Declaration of Denise Paolucci

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

NETCHOICE, LLC, *Plaintiff*, v. LYNN FITCH, in her official capacity as Attorney General of Mississippi, *Defendant*.	Civil Action No. _____

DECLARATION OF DENISE PAOLUCCI IN SUPPORT OF PLAINTIFF NETCHOICE'S MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

I, Denise Paolucci, declare:

1. I am the co-owner of Dreamwidth Studios, LLC, which operates the website dreamwidth.org. I have co-owned and operated Dreamwidth since the site's inception and have worked in multiple roles for the website, including as the head of the Trust and Safety team, which handles reports of abuse and violations of policy on the site, and head of product development. I make this declaration from personal knowledge and a review of Dreamwidth's records kept in the ordinary course of business.

2. Dreamwidth is an open source social networking, content management, and personal publishing website, in operation since 2009. Registering an account requires a user to choose a username, provide an email address, and explicitly agree to the provisions of our Terms of Service. Dreamwidth's registered users can create public profiles that contain multiple pieces of information about themselves, post content to their "Journal" and comment on others' posts; create, join, and post content in "Communities" that function as Journals intended to focus on a specific discussion topic to which multiple users can contribute; send direct messages to users who in accordance with the privacy settings those users have chosen, post and comment in shared community forums, and construct and populate and browse a feed that presents the user with aggregated content posted by other users they have chosen to follow. Dreamwidth operates according to a set of Guiding Principles and a Diversity Statement that encapsulate our business philosophy. *See* https://www.dreamwidth.org/legal/principles; https://www.dreamwidth.org/legal/diversity. Dreamwidth provides a number of privacy, security, and content-control features, allowing our users a high degree of control over their own data and their own online experience. Our users can choose who sees their content, restrict access to their content in multiple ways, and control the visibility of everything they post to the site.

3. ***Business model and data sharing.*** Dreamwidth does not accept any form of advertising and does not engage in the sale, trade, or brokering of user data. Our revenue comes entirely from our "freemium" model, where approximately 20% of our users pay a fee to access extra services and fund the site for the approximately 80% of our active users who use the site on an unpaid basis. We do not accept payment to promote posts, change the order or priority of content, or to target content or posts to a subset of users. We do not offer any algorithmic sorting or display of user timelines that adjusts the display of content based on a prediction that a particular user will be more or less interested in a particular piece of content, and we do not collect or store the data about user behavior that would allow us to make those predictions. Our Privacy Policy (https://www.dreamwidth.org/legal/privacy) and Guiding Principles promise users that we will collect the minimum amount of personally-identifying data about them that is necessary in order to operate the service.

4. Dreamwidth.org has approximately 4 million registered accounts, and has approximately 2 million unique visitors annually. We operate on an extremely limited budget, and are staffed by myself and the company's other co-owner, two part-time employees, and approximately 200 volunteers.

5. Creating an account is necessary to use most of the website's speech-facilitating functionality and to view much of the content, although we do not require visitors to the site to create an account. Primarily, users must create an account to *post* content and to share their expression with an audience of their choosing. Viewing content is more mixed. For example, searching for individual posts that contain certain phrases or keywords is limited to registered users only. But users have a lot of control over who sees and can interact with their content. In accordance with our principles regarding individual control over account settings and content, individual users

can choose to restrict the visibility of their content only to specific users they have affirmatively granted access to the content, on a per-post basis. Users can choose to restrict the visibility of contact information on their profile only to registered users, to specific users they have affirmatively granted access to the contact information, or to no one at all. Users can choose who can comment on their posts, with the options being all site visitors including those who do not have a site account, registered accounts only, specific users they have affirmatively granted access to comment to their posts, or no one at all. In addition to the public and private post settings, the owner of a Community can also choose to restrict posts only to members of the Community, and can also either allow any registered user to join the Community to see the content posted to it or only allow registered users they have affirmatively granted access to join the Community. Visitors to the site who have not created an account can read public posts made by specific users, access an aggregate feed of the most recent public posts made to the site, look up users who have indicated that they are interested in certain topics or keywords, or ask to be shown a random active account. The default settings for content visibility and access permissions, which apply unless a user overrides them for a particular post or for their account as a whole, are for posts to be visible to every site visitor, for registered users only to be able to comment in reply to a post, and for profile contact information to be visible only to registered users. The majority of our users use the ability to change post privacy settings in their account on a per-post basis, and post a mixture of publicly available and visibility-restricted content. There is no single prevailing configuration for Community accounts: our users have found a wide range of settings beneficial depending on the purpose of the Community. In any use case, whether a Journal or a Community, visitors to the site who haven't registered an account are only able to access a limited subset of the speech available on the site and are only able to contribute to a small subset of discussions happening on the site.

6. Dreamwidth does not deliberately target minors as an audience, and our intended audience is adults looking for a social media service that will respect their privacy. However, in order to ensure compliance with the Children's Online Privacy Protection Act (COPPA), we do collect a date of birth from all users at registration. When a user signs up for a Dreamwidth account, they must enter a username, an email address that can be verified through an automatic email link, a password, and a birthdate. The birthdate field displays a notice that "This information is required by law" and "You must enter your real birthdate". In accordance with COPPA, we have chosen not to create a system that will attempt to verify parental consent for children under the age of 13 to maintain an account on the service. Therefore, we do not accept registration from users whose birthdate provided at registration indicates they are under 13 years old.

7. Accounts owned by users whose birthdate indicates they are under the age of 18 have further restrictions placed on those accounts for the purposes of user safety, such as the inability to view any post or account that a user or Dreamwidth itself has marked as inappropriate for viewing by minors, and restricted visibility in some search results.

8. Dreamwidth does not collect address or location data of our users, at the time of account registration, login, or posting. We utilize a limited form of our network provider's geolocation service to block connections from certain countries that have been the source of elevated levels of network abuse, but we do not associate that geolocation data with specific accounts, and this geolocation and blocking happens before the connection even reaches us. Users are able to voluntarily provide their location information if they choose to do so in order to display it on their profile. Approximately 560 Dreamwidth users have chosen to voluntarily identify themselves as residents of Mississippi, and at least one of those users has provided a birthdate indicating they are or will be under the age of 18 on the date Mississippi House Bill 1126 is set to take effect. Because

we do not store our upstream provider's geolocation data, associate it with individual user accounts, or perform geolocation on our users once their connection reaches our site, this figure does not count users who may be located in the state of Mississippi but have not chosen to provide their location information. There is no way for us to identify how many additional users may be located in the state of Mississippi but have chosen not to provide their location information.

9. Because we have users located in the state of Mississippi and because we meet the definitions of "digital service provider" as set forth in the Act, it is my understanding that Dreamwidth will be required to comply with the Act. We cannot comply with the Act without making significant, sweeping changes to the site that we do not have the resources to make and without collecting additional personally identifying data about each account that we do not currently collect. The short, two-month timeframe the Act provides before digital service providers must comply with the Act makes it particularly impossible to make those changes within the necessary timeframe. The changes the Act would require us to make to the software that runs our site would take months, if not years, of work at our current development capacity. The ongoing support burden the Act would impose upon us would also be impossible for us to meet at our current level of staffing, and we do not have the financial capabilities to add more staff.

10. ***Age Verification.*** To the best of my knowledge, there is no technology—much less any technology available to a site with Dreamwidth's limited resources—that can identify users who are under the age of 18. The only method that can determine a user's age to a sufficient degree of confidence is to require every user, no matter what age they claim to be, to upload government-issued identification, deanonymizing themselves and jeopardizing their privacy. There is no age verification system that is not also a deanonymization and identity verification system.

11. Because we do not perform geolocation on our users, we are unable to determine which of our users are located in Mississippi. To identify which of our users are located in Mississippi and whose age we must establish, either we must (a) begin performing and storing geolocation data lookups on every individual user account to determine which users' connections to the site originate from Mississippi, whom we must therefore presume to be residents of Mississippi who must undergo deanonymization and identity verification; (b) deanonymize and perform identity verification on all users, no matter where their connection originates; or (c) utilize our network provider's geolocation service to prevent *any* connection originating in the state of Mississippi from reaching our servers to avoid the potential that the person using that connection is under the age of 18.

12. Because people can move at any time and can travel to states they don't reside in, a single deanonymization and identity verification at the time of account creation would be insufficient to comply with the Act. To protect against the possibility that someone under the age of 18 had moved to Mississippi after creating an account, or the possibility that someone under the age of 18 residing in Mississippi was creating an account while on vacation to another state or by using a location-concealing VPN service to enhance their online privacy, we would need to perform regular deanonymization and identity verification checks of all users. This will place a significant burden and chilling effect on the speech and conduct of every person who uses Dreamwidth's services, not only people under the age of 18 in Mississippi or even only on adult Mississippi residents.

13. The Act prevents digital service providers from collecting, but does not define, "precise geolocation data" of a known minor. In the absence of a working definition of "precise geolocation data", we are uncertain what level, accuracy, or granularity of geolocation is or would

be acceptable for us to use in order to determine which of our users are located in the state of Mississippi and subject to the Act. My interpretation of the Act is that in order to comply with it, we would need to collect additional geolocation data about our users that we do not want to collect, but also that the law prevents us from collecting some geolocation data at an undefined level of specificity. Reading the law does not allow me to determine what measures I am permitted to implement in order to comply with the law. Even if we were to assume the working definition as implemented in other states' privacy laws (data sufficient to place a user within 1750 feet) we cannot be sure if this is sufficient to comply with the Act, nor can we be sufficiently confident this would identify every user of the site located in Mississippi.

14. Dreamwidth's users are extremely privacy-conscious. Our users frequently cite our business practices, our commitment to refrain from selling or sharing their personal data, and our refusal to even gather any data that is not directly necessary to provide our services as the reason they've chosen to use our website. For the state of Mississippi to force us to begin collecting account-level geolocation data alone, much less to perform deanonymization and identity verification on every account, would alienate our users, violate the promises we have made to them, and be contrary to our principles. We do not want to be forced to collect this data, and our users do not want to be forced to provide it to us.

15. Because of our strong commitment to privacy and anonymity, a large percentage of our userbase consists of marginalized people who experience heightened personal security concerns online. A nonexhaustive list of these groups include: (a) Russian or Chinese activists protesting their government's human rights abuses, who are comfortable using our site because we do not cooperate with their government's mandated censorship and do not require them to provide us

personally identifying information that may be discoverable by their government; (b) disabled people who are looking for community or seeking to share information on their conditions, who are comfortable using our site because we do not require them to provide us personally identifying information that may be used against them by doctors, insurance companies, employers, etc., and because we employ significant effort to make sure the site is accessible to multiple conflicting disability access needs; (c) blind people who can use our site easily because of the significant effort we employ to ensure the site is one of the most screenreader-accessible products on the internet and because we minimize the steps it takes to create an account; (d) people of marginalized genders and sexualities, who are comfortable using our site because we don't accept advertising and therefore are not affected by companies who are more likely to treat LGBTQ content as age-inappropriate while heterosexual content is treated as acceptable. These groups and many others rely on our promise of privacy and anonymity to feel comfortable engaging in online speech. If Dreamwidth is forced to impose an identity verification requirement, it will have a significant chilling effect on these groups' willingness to engage in online speech. Our users frequently cite our commitment to preserving and defending their ability to speak anonymously and our refusal to engage in data brokering practices as a primary reason they use Dreamwidth rather than any other service.

16. ***Content moderation and policies.*** For the purposes of this declaration, I define "content moderation" as "the administrative process by which we evaluate specific accounts, posts, and comments to determine whether they violate our Terms of Service and the actions we take to restrict or remove access to that content", and "content policies" as "the internal editorial guidelines we use to interpret the Terms of Service and make that determination about specific types of content."

17. Content moderation on Dreamwidth consists of our users reporting content they feel may violate the Terms of Service to our Trust and Safety team, which consists of me and one of our part-time employees. When content is reported, we evaluate it against our content policies. If the content violates our content policies, we will "suspend" it. We are able to suspend individual posts or accounts as a whole. When a post or an account is suspended, it is invisible to anyone but the user who posted it. If the violation is minor and easily corrected by editing the post to remove the violation or by deleting a small number of posts to return the account as whole to compliance with the Terms of Service, we allow users to make those corrections, and we restore the account to visibility ("unsuspension") after we've confirmed they've made the required edits. If the vast majority of the account's content violates the Terms of Service, if we believe the account as a whole was created for the sole purpose of violating the Terms of Service or the user has no intention of complying with the Terms of Service, or if the account contains certain types of egregious violations such as content that advocates, promotes, or instructs readers on how to commit actions prohibited by United States law, the suspension is permanent and we will not restore the account under any circumstances.

18. Because of our limited administrative and technical capacity, and because of our editorial philosophies and Guiding Principles, we cannot and do not proactively monitor or search for content posted by our users that requires content moderation, either on a manual or automated basis. If we become aware of accounts or posts that require content moderation through the ordinary course of business, we treat those accounts or posts as though they had been reported to us by a user and take the same actions we would take if they had been reported to us by a user. The only exception to our policy of not proactively searching for content that violates the Terms of Service are inauthentic accounts created for the purpose of abusing the network for the purpose of

unsolicited promotion or advertising, aka "spam", which we detect and remove through several approaches that combine automated detection with manual review. Controlling spam and engaging in content moderation resulting from user reports takes up the majority of the available time of the two people who do that work. Some level of automated spam detection is possible, because much of the spam we receive consists of posting repetitive and high-volume links to external sites that no legitimate user would ever link to: we are able to detect it on both an "abnormal volume of activity" basis and by identifying attempts to post links we have already determined to be spam. We cannot adopt this automated approach for content moderation, because there are no specific terms or keywords used in content that violates our content policies that are not also used in content that does not violate our content policies. Moderation of *speech* (rather than moderation of *behavior* such as spamming) must evaluate the entire context of the speech, and pure keyword detection results in overwhelmingly more false positives than legitimately violating content: for every true positive an automated detection system can identify, there may be hundreds of false positives that must be evaluated and dismissed. The significant rate of false positives for automated detection would prevent us from timely handling of user reports of potentially violating content, which are more accurate.

19. Our internal content policies derive from our Guiding Principles and from the experience of my twenty-two year career in social media Trust and Safety. In general, our users agree to our Terms of Service, which make clear that we do not allow: "Content that is harmful, threatening, abusive, hateful, invasive to the privacy and publicity rights of any person, or that violates any applicable local, state, national, or international law, including any regulation having the force of law." https://www.dreamwidth.org/legal/tos. We do not make our specific content policies with the detailed criteria used to evaluate content and apply these restrictions publicly available. It is

my experience—and the general consensus of the members of the Trust and Safety profession as a whole, based on those I have discussed the question with and the professional literature I have read—that publicizing the exact criteria used to evaluate content results in users posting more content that approaches, but does not cross, the exact threshold of being prohibited. In other words, publicizing the exact criteria that we use in content moderation could allow users to "game" the rules.

20. Content moderation is difficult, in part, because people who want to evade moderation often attempt to change their speech in plausibly-deniable ways that could have multiple interpretations. For example, many people on social media develop alternative vocabulary and signifiers to evade specific content policies and allow their posts to remain visible, a practice researchers and reporters have come to call "algospeak". For instance, automated detection systems on one popular website remove or restrict some videos that use the word "kill" or "suicide": to evade these detection systems, users began to use the euphemism "unalive" instead. Users often replace slurs with emoji that suggest the slur, words that rhyme with the slur, words that have similar sounds to the slur, or unrelated words that play on negative stereotypes about the group the slur is intended to reference. Individual groups also develop coded references intended to conceal their meaning from people who are not members of the group while maintaining a facially plausible alternative explanation for the use of the reference. For example, a user who chooses a username containing the number "88" may do so innocently because they were born in 1988, or they may be intending a coded reference to the white supremacist slogan "Heil Hitler", which is shortened to 88 because H is the 8th letter of the English alphabet. All of these linguistic signifiers develop quickly, spread rapidly, and can require a reader to be familiar with earlier steps in the substitution chain. While some of the signifiers are obvious to an outside reader, some of them

require deep knowledge of the vocabulary in question. A large part of content moderation work requires being current with the current euphemisms and substitutions for a wide range of content, including coded references to illegal drug consumption and sales, the creation and trading of child sex abuse material, white supremacist ideology, the advocacy of terrorist acts, and other forms of content a site wishes to prohibit. Interpreting content that is reported to us involves a number of complex judgment calls and nuance.

21. Developing content policies is a complex, difficult process for which there is no easy or simple shortcut. Despite every effort we take to make our content policies as objective and specific as we can, evaluating specific content that is reported to us and determining whether it requires content moderation involves significant deliberation, extremely close reading and attention to nuance, and considerable subjective editorial discretion. Our general editorial philosophy in creating content policies is to allow for the maximum amount of legal speech as possible, but we also moderate speech that the Trust and Safety industry calls "lawful but awful": content that is legal but that we feel is harmful to the service and to society as a whole. What subset of "lawful but awful" content we subject to content moderation is a constantly evolving standard that we regularly revisit based on published scientific research, expert opinion, the opinions of our users (both in what types of content they report to us for investigation and in their feedback about our content policies), and the overall civic debate.

22. The content the Act will require us to restrict from viewing by minors is a combination of some facially illegal content (which we already remove entirely from the service as required by law when reported to us but do not have the capacity to proactively detect in every instance) and "lawful but awful" content that our content policies already address, depending on how Defendant interprets the Act's requirements. Though the incidents of such content posted to

our website are extremely rare, we already remove content and close the accounts of people who engage in unprotected speech such as incitement to violence, material support of terrorist organizations, grooming, trafficking; the solicitation, suborning, or trading of child sex abuse material; sexual exploitation and abuse, material we judge likely to be found "obscene" under the balancing test first defined in *Miller v. California*, 413 U.S. 15 (1973); offers to buy, sell, or trade for illegal drugs; and all other forms of advocating, promoting, or instructing people how to commit illegal activity (as defined by the laws of our home state Maryland and of the United States as a whole.)

23. However, several of the categories of speech the Act seeks to require us to restrict from viewing by minors—including speech related to self-harm, eating disorders, substance use disorders, suicidal behaviors, online bullying, and harassment—can include a wide range of speech that is not only protected, but valuable and suitable for minors (or at least for some). Our editorial philosophy in developing our content policies specifically seeks to center the ability of individuals, including minors, who struggle with these issues to have honest, open, and frank discussions of their experiences and struggles. Research into the effects of social media on minors confirm that this approach is particularly beneficial for minors who belong to racial, ethnic, sexual, and gender minorities (Charmaraman, L., Hernandez, J., & Hodes, R. (2022), *Marginalized and Understudied Populations Using Digital Media*, in J. Nesi, E. Telzer, & M. Prinstein (Eds.), Handbook of Adolescent Digital Media Use and Mental Health, Cambridge, Cambridge University Press, https://doi.org/10.1017/9781108976237.011) and can encourage minors who are experiencing mental health challenges to support each other and to seek out mental health care. (Hollis, C., Livingstone, S., & Sonuga-Barke, E. (2020). Editorial: *The role of digital technology in children and young people's mental health - a triple-edged sword?* Journal of child psychology and psychiatry, and allied disciplines, 61(8), 837-41, https://doi.org/10.1111/jcpp.13302).

24. In developing our content policies regarding what subset of this category of speech we restrict, our goal is to minimize our intrusion on our users' speech that falls into these categories of speech that has a socially valuable and beneficial effect, despite describing the speaker's experience with unpleasant things or difficult struggles. Depending on the interpretations the Defendant uses for the Act, the Act's prohibition on showing minors content related to "harassment" could not only require us to remove speech that is itself harassment—which we already remove—but also speech that discusses how someone felt when experiencing harassment (which can provide support and validation to a minor experiencing harassment), explores how someone came to realize that their treatment was harassment (which can help a minor experiencing harassment realize that their treatment is unacceptable), or describes the steps someone took to recover their resilience and stability after experiencing harassment (which can provide an example to a minor experiencing harassment to prove that recovery is possible). The Act's prohibition on showing minors content related to "substance use disorders" could not only require us to remove speech that instructs people on how to obtain illegal drugs—which we already remove—but also speech that discusses how someone came to realize that their use of legal substances had become unhealthy or dependent (which can help a minor to come to the same realization or help them to avoid beginning the unhealthy patterns of use in the first place), or speech that validates the difficulty of the recovery process but affirms that recovery is possible and beneficial (which can help a minor who is experiencing substance use disorders to begin treatment and to continue treatment even if it is initially difficult or seems impossible).

25. The Act references the difficulty in regulating this content in that it makes exception for "resources for the prevention or mitigation of the harms . . . including evidence-informed information and clinical resources", but it does not define any of the terms it uses or explain how

we could establish that a user's post contains evidence-informed information or clinical resources. Act § 6(2)(b). The Act would require us to prevent minors from being exposed to "content that promotes or facilitates . . . self-harm, eating disorders, substance use disorders, and suicidal behaviors", as defined by "evidence-informed medical information", but does not define "evidence-informed medical information" or offer us any guidance on how we should determine scientific and medical consensus, which expert opinions we should place weight on, or how to weigh the context of the content, its presentation, and its intended audience. *Id.* § 6(1)(a). The Act will require us to restrict "online bullying [and] harassment" and "patterns of use that indicate or encourage substance abuse or use of illegal drugs" from visibility to minors, but gives no guidance as to how to define or identify what it means by those terms. *Id.* § 6(1)(a)-(b). The uncertainty surrounding these terms, and the threat of state enforcement against us if the Defendant disagrees with our evaluations of the scientific evidence available to us, mean that we will no longer be able to utilize our best judgment about which subset of the protected speech concerning these topics is beneficial to minors and may remain and which subset is detrimental and must be removed. Instead, we will be forced to remove content based only on our best approximation of the beliefs of the Defendant, which will cover a great deal of speech we currently believe is beneficial and valuable to host and facilitate.

26. In reading the Act, I do not know and cannot determine what, if any, changes to our content policies the state of Mississippi will require us to make in order to comply with the Act. Because I do not know and cannot determine what changes to our content policies complying with the Act will require, and because we do not have the ability to limit our content moderation actions to only residents of the state of Mississippi, we will be forced under threat of state enforcement to impose significantly greater restrictions on our users' speech than we would like to impose.

27. ***Feature design and user safety***. In accordance with our Guiding Principles regarding privacy and individual control over how users' content is displayed to others, we have extremely limited forms of content recommendation systems. Registered users can choose to search for posts that contain specific words or phrases, but we do not display "suggested" or "related" posts when a user is viewing a post or comment. We have a single, limited form of suggesting accounts a user might be interested in: users can visit a separate page that ranks the accounts most frequently followed by people the user follows.

28. We have two levels of flags for content restriction and rating. Users can apply these flags to individual posts or to their entire account, in which case each post made to the account will inherit the flag placed on the entire journal. The first level, "Viewer Discretion Advised", puts the content behind a click-through warning notice, customizable by the user, stating that the poster has advised that the content "should be viewed with discretion", along with any optional information a user provides about the reason they've restricted the content. (For instance, some users choose to restrict content because it contains "spoilers" for a TV show or film that has just aired, or because it contains photos that are not explicit but depict common phobias such as spiders or snakes.) There is no age restriction on who can reveal this content. The second level, "Adult Content", prevents users who are under the age of 18, as determined by the birthdate given at account creation, from viewing the content. Users whose birthdate given at account creation indicates they are over 18 will get a click-through warning notice reading "you are about to view content that [username] marked as inappropriate for anyone under the age of 18," along with any optional information a user provides about the reason they've restricted the content, though users over the age of 18 can disable these warnings in their account settings and choose to always view the content without a click-through warning.

29. Each individual user can choose how to define what they consider "Adult Content" for the purposes of their account. For instance, users may use the label for posts that contain an above-average level of swearing, posts that link to news stories about graphic violence or display images of newsworthy graphic violence, or posts that discuss sexual activity in a way they feel is inappropriate for a non-adult audience. In general, we allow our users to define "Adult Content" as they see fit. However, if an account is reported to us as containing graphic visual depictions of sexual activity or sexualized nudity, and the account does not use the "Adult Content" label, we will apply that label as an administrative action. The voluntary compliance rate of our users in labeling posts and accounts that contain Adult Content is extremely high. Although we do not keep (and cannot reconstruct) records of how often we apply the Adult Content label to an account, my best estimate, as the only person who determines when to apply the administrative label to accounts, is that I need to do so fewer than twenty times a year.

30. If visitors to the site have not created or are not logged into an account, we treat them as over the age of 18 for the purposes of displaying posts and accounts that contain the Adult Content flag: the content shows a click-through warning notice and the visitor must confirm they are over the age of 18 to access it. We have chosen to treat logged-out visitors as over the age of 18 because it is our experience that treating all logged-out visitors as though they are under 18 results in far fewer users properly using the Adult Content label for their account as a whole or for specific posts. This makes Dreamwidth less safe for our registered under-18 users—for which the Adult-Content-flagged content is *not* visible when those users are logged in.

31. We provide an aggregate feed of the most recent public posts made to the site. This feed can be filtered, to some extent, to show a subset of posts based on labels ("tags") users have chosen to apply to their posts. We limit the tags that a user can use to filter this feed to only the

most-frequently-used tags. A user's posts do not appear on this feed if the user has marked the individual post as containing Adult Content, if the user has marked their entire account as containing Adult Content, or if the user has activated the account setting that prevents their posts from appearing on this feed.

32. We have the administrative ability to mark a user's entire account as containing Adult Content and to activate the account setting that prevents a user's posts from appearing on the site-wide feed of most recent public posts. Because of our limited administrative and technical capacity, and because of our general belief that users are entitled to a wide amount of discretion in how they express themselves, we do not proactively monitor or search for accounts or posts containing Adult Content that are not labeled as Adult Content. Users are able to report accounts that contain Adult Content but are not labeled as Adult Content to our Trust and Safety department, at which point we evaluate the account and apply the Adult Content label as appropriate if the majority of the account contains Adult Content. We also apply the Adult Content label as appropriate to accounts we encounter on the site in the ordinary course of business where the majority of the account contains Adult Content but the account is not marked as such. We do not have the technical capacity to mark individual posts as containing Adult Content: we can only apply the label to the account as a whole. However, individual users have this post-by-post ability.

33. ***Compliance burdens.*** Dreamwidth does not have any full-time employees. In addition to myself and my co-owner, both of whom operate Dreamwidth in our spare time, we have two part-time employees. We depend on a pool of approximately 200 volunteers, all of whom donate their time to make programmatic improvements to the site, provide technical support on a peer-to-peer basis, and protect the community from spam and malicious traffic. We do not have the resources to add more employees: because we are funded only by the users who choose to pay

us, not by advertising, our budget is severely constrained and we are unable to absorb additional expenses. We do not have the capacity to build identity-verification or parental-consent systems. And we both do not have the financial resources to engage a third-party service to do it on our behalf, but also object to that practice because it inherently involves the transfer of user data to a third party, something that is against our Guiding Principles.

34. From my twenty-two year career in online Trust and Safety, both at Dreamwidth and at prior jobs, I know that confirming a parent-child relationship is significantly complicated, difficult to do accurately, and prone to multiple forms of "social engineering" attempts by unrelated third parties to coerce a site into disclosing protected user information or forcing users out of a community. For instance, because COPPA governs a website's ability to collect data on minors under the age of 13, a relatively common social engineering vector adopted by parties who maliciously wish to fool a website into closing a user's account is to write to the website and falsely claim the user is under the age of 13 and does not have parental consent to hold an account, even though the user is over the age of majority. Likewise, a relatively common social engineering vector adopted by parties who maliciously wish to obtain nonpublic information about a user's account is to write to the website and falsely claim to be the user's parent, requesting access to nonpublic data about the account. The provisions of the Act codify these tactics into law, and will provide malicious third parties unrelated to a user the ability to presumptively challenge the age and identity of any user. This not only creates a "heckler's veto" over any speech that proves unpopular or socially disfavored, allowing anyone the ability to force us to deanonymize any user whose speech offends someone and force them to prove that they are an adult, but will dramatically increase our support burden necessary to create and administer the system for these age challenges. We do not have the capacity to accept this additional support burden, nor do we have the financial

resources necessary to increase staffing to increase that capacity. Because of that, the Act threatens our ability to continue operating.

35. From my twenty-two year career in online Trust and Safety, I know that familial relationships are often far more complicated than conventional wisdom believes, and identifying which person is a minor's parent or guardian with legal decision-making authority is often a complex task. For instance, if a minor has two divorced parents who disagree about whether their minor child should be permitted to hold an account on a website, the website must confirm the legal relationship between the parties and the minor involved, and determine which of the people at hand has the legal decision-making authority to provide sufficient parental consent. In a particularly contentious divorce, this can require a website to review divorce decrees, examine legal paperwork, and determine the authenticity and provenance of the documents supplied to them. Because someone who lives in Mississippi may have obtained their divorce from any one of the thousands of courts across the United States, or even from another country, before moving to Mississippi, this would require us to become experts in authenticating and interpreting court documents from anywhere in the world to verify which parent has legal authority to provide parental consent. We do not have the capacity to perform this authentication, nor do we have the financial resources necessary to increase staffing to increase that capacity. For this reason, too, the Act threatens our ability to continue operating.

36. There is no national identity database that allows someone to verify a minor's identity, the legal relationship between a parent and a minor, or which parent has the authority to make binding decisions for a minor. There is no way to verify a user's identity beyond requiring the upload of government-issued identifying documents with corroborating photo or video confirmation, and many minors do not have photo ID. There is no way for a website to authenticate or verify

that the documents uploaded for identity verification purposes belong to the person who is uploading them, that the person who controls the account is the same person who provided the identifying documents, or that the documents are legitimate and not a forgery. Disputes about the identity of an account holder, their age, or the legal relationship between them and the person claiming to be their parent are complex, time-consuming, costly to investigate and resolve, and unfortunately common. The Act would only increase their number. We do not have the capacity to accept this additional support burden, nor do we have the financial resources necessary to increase staffing to increase that capacity.

37. Because of the uncertainty and vagueness of the Act, the lack of useful definitions for many of its provisions, the impossibility of determining to any degree of certainty which users are residents of Mississippi without collecting additional personal data we do not currently collect, and the impossibility of determining which users are under the age of 18 without deanonymizing and forcibly identifying every user of our site, the Act will force us to err on the side of caution, require us to restrict access to the site beyond the restrictions we wish to place, require us to spend money far in excess of our available budget attempting to comply with the Act's burdensome and expensive dictates, require us to force our users to provide us significantly more personally-identifying data than we want to collect or they want us to have, generally require us to place significant burdens on the speech, conduct, and anonymity of both adults and minors, and will jeopardize our ability to continue offering the service at all.

* * *

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 30 day of May, 2024, in Baltimore, MD.

Denise Paolucci
Co-Owner, Dreamwidth Studios, LLC

Appendix 9.d

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

NETCHOICE, LLC, *Plaintiff*, v. LYNN FITCH, in her official capacity as Attorney General of Mississippi, *Defendant*.	Civil Action No. 1:24-cv-00170-HSO-BWR

DECLARATION OF BARTLETT CLELAND IN SUPPORT OF PLAINTIFF NETCHOICE'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I, Bartlett Cleland, declare as follows:

1. I am the General Counsel and Director of Strategic Initiatives of Plaintiff NetChoice. As such, I draft and deliver legislative testimony, regulatory comments, and position papers in support of NetChoice's objectives, as well as represent NetChoice in public forums, at industry events, and in meetings with government officials and agencies. My role at NetChoice and my previous experience—which includes being a known thought leader, writer, and speaker on all issues of innovation, communications, and technology, having spent twenty-six years in the technology and innovation public policy space—has also made me familiar with NetChoice members and other websites, applications, and digital services more broadly.[1]

2. I submit this declaration in support of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction. I am over the age of 18 and am competent to make the statements herein. I have personal knowledge of the facts set forth in this declaration and, if called and sworn as a witness, could and would competently testify to them.

I. About NetChoice.

3. NetChoice is a national trade association of online businesses that share the goal of promoting free speech and free enterprise on the Internet. NetChoice is a 501(c)(6) nonprofit organization. As our website explains, NetChoice "works to make the Internet safe for free enterprise and free expression" and engages at the local, state, national, and international levels to ensure a bright digital future.[2] In particular, we are dedicated to preserving the Internet as a vibrant marketplace for communication, commerce, and the exchange of ideas.

[1] This Declaration will refer to all digital services regulated by Mississippi House Bill 1126 (2024) as "covered *websites*" unless necessary to distinguish among different kinds of digital services. Similarly, this Declaration will use "members" to refer to NetChoice members with services regulated by the Act, unless otherwise noted.

[2] NetChoice, Home, https://perma.cc/7TK7-RSKH.

4. For over two decades, NetChoice has worked to promote online speech and commerce and to increase consumer access and options through the Internet, while minimizing burdens on businesses to help make the Internet more accessible and useful for both businesses and consumers. Our members include a broad array of popular online services, including: Airbnb, Alibaba.com, Amazon.com, AOL, Dreamwidth, Duolingo, Earnin, eBay, Etsy, Expedia, Fluid Truck, Google, Hims&Hers, HomeAway, Hotels.com, Lyft, Meta, Netflix, Nextdoor, OfferUp, Orbitz, PayPal, Pindrop, Pinterest, PrizePicks, Reddit, Snap Inc., StubHub, Swimply, TravelTech, Travelocity, Trivago, Turo, VRBO, VSBLTY, Waymo, Wing, X (formerly known as Twitter), Yahoo!, and YouTube. NetChoice, About Us, https://perma.cc/XKB6-PVSJ.

5. NetChoice has over two decades of experience advocating for online businesses and for the principles of free speech and free enterprise on the Internet. That experience, combined with the practical applications of the law and declarations submitted by our members, leads us to conclude that Mississippi House Bill 1126 (2024) ("Act"), were Defendant permitted to enforce it, would irreparably harm our members and those who interact with members' websites.

II. NetChoice members' websites are full of valuable expression and communities that provide people—minors and adults alike—with profound benefits.

6. NetChoice members' websites publish, disseminate, display, compile, create, curate, and distribute a wide range of valuable and protected expression to their users. They disseminate content (text, audio, graphics, and video) that facilitates their users' ability to practice their religious beliefs, engage in political discourse, seek cross-cultural dialogue, supplement their education, learn new skills, and simply interact socially. Thus limitations on websites limit the dissemination of a vast range of protected speech.

7. Because covered websites disseminate such a broad array of protected speech, users employ the covered websites to communicate in a wide variety of ways:

- **Socially.** At core, the Act singles out websites defined by their dissemination and facilitation of user-created speech, "[c]onnect[ing] users in a manner that allows users to socially interact with other users on the digital service" and "[a]llow[ing] a user to create or post content that can be viewed by other users of the digital service" Act § 3(1).
- **Demonstratively.** Covered members allow their users to showcase their creative, artistic, and athletic talents to audiences of their choosing—ranging from users' closest friends to the websites' broader community of potential billions. Examples abound. Websites disseminate users' artistic works, such as paintings or student films. They disseminate creative writing or citizen journalism. And they disseminate athletic highlights from high school athletes.
- **Informatively.** Covered members can be a valuable source of news for their users. Users can access everything spanning front-page news from the Nation's oldest journalistic institutions to student journalism relevant to their local school.
- **Politically.** Covered members also disseminate political speech, allowing their users to participate in public discussion or raise awareness about social causes. Public officials, thought leaders, and citizen activists all use members' services to spread their messages and interact with the public.
- **Educationally.** Covered members disseminate a vast amount of educational material. For instance, university professors can upload lectures on everything from accounting to oceanography. Creators upload step-by-step help guides to solve math problems or change tires.

8. In addition to all of those opportunities (and more), NetChoice member websites offer their users the ability to participate in different communities. On Dreamwidth, users can share

their creative writing and read the works of others. On Facebook, users can create communities with other like-minded users for many purposes, including by taking part in religious services. On Instagram, users can share vacation pictures and short informative videos. On Nextdoor, users can connect with their neighbors, including by sharing local news and requesting to borrow tools. On Pinterest, users can discover ideas for recipes, style, home decor, motivation, and more. On Reddit, users can create and lead their own communities, on all manner of subjects. On X, users can engage with their elected representatives and the political, cultural, and social topics of the day. And on YouTube, users can watch documentaries, in addition to all manner of educational, informative, and entertaining content.

III. Parents have many tools to oversee and control their minor children online, and NetChoice members go to great lengths to protect minors.

9. Parents and guardians have many overlapping and complementary choices to oversee and control their minor children's use of the Internet, including controlling whether their minor children have access to Internet-connected devices in the first place. And there are resources that collect many of these tools in one place for parents. Internet Matters, Parental Control Guides, https://perma.cc/VM8B-65K3 ("Internet Matters, Parental Control Guides").

a. Network-Level Restrictions. Many, if not most, cell service and broadband Internet providers have designed and advertised tools for parents to block Internet access altogether, to block certain apps, sites, and contacts from their children's phones, and to restrict screen time on their children's devices. *See, e.g.*, Internet Matters, Parental Control Guides (collecting parental-control guides for "broadband & mobile networks"); Verizon, Verizon Family, https://perma.cc/AV3V-N7HC; AT&T, Secure Family, https://perma.cc/QP5R-U5J4; T-Mobile, Family Controls and Privacy, https://perma.cc/2FE5-67PN; Comcast Xfinity, Set Up Parental Controls for the Internet, https://perma.cc/44TQ-JLBL. Similarly, there is much publicly

accessible information about the many wireless routers that offer parental control settings parents can use to block specific online services, limit the time that their children spend on the Internet, set individualized content filters, and monitor the online services their children visit. *See, e.g.*, Netgear, Circle Smart Parental Controls, https://perma.cc/APV2-XDRN; tp-link, How to Configure Parental Controls on the Wi-Fi Routers (Case 1), https://perma.cc/3GQ9-TJQL.

b. Device-Level Restrictions. Many devices themselves contain ways parents can restrict their use. *See* Internet Matters, Parental Control Guides (collecting parental-control guides for "devices"). Many of the most popular mobile phone and tablet manufacturers like Apple, Google, Microsoft, and Samsung publicize the ways they allow parents to limit screen time across their devices and provide parents with tools to control what applications their children can use, set age-related restrictions on those applications, filter content, and control privacy settings. *See, e.g.*, Apple, Use Parental Controls on Your Child's iPhone and iPad, https://perma.cc/L6VP-GW47; Google, Family Link, Help Keep Your Family Safer Online, https://perma.cc/7EUE-CD6Q; Microsoft, Getting Started with Microsoft Family Safety, https://perma.cc/7UXF-BV92; Samsung, Parental Controls Available on Your Galaxy Phone or Tablet, https://perma.cc/9EUV-4Z7T. There are also many third-party applications parents can install on their children's devices to monitor their activity, set limits on screen time, and filter content—as publicized in mainstream publications. *See, e.g.,* Alyson Behr, *The Best Parental Control Apps in 2025, Tested By Our Editors*, CNN underscored (Jan. 2, 2025), https://perma.cc/Q3SF-TBNF.

c. Browser-Level Restrictions. There are also parental controls on Internet browsers that allow parents to control what online services their children may access. *See, e.g.*, Internet Matters, Parental Control Guides (collecting parental-control guides for browsers); Mozilla, Block and Unblock Websites with Parental Controls on Firefox, https://perma.cc/XY8T-ZT9S. Some

browsers offer a "kids mode" or allow parents to see what online services their children are accessing the most. *See* Google, Safety Center, https://perma.cc/Z7R6-73FW; Microsoft, Learn More About Kids Mode in Microsoft Edge, https://perma.cc/YH7C-X9L9. Third-party software and browser extensions are also widely available to reinforce these tools. *See, e.g.*, Kim Key, *The Best Parental Control Software for 2025*, PCMag (Nov. 15, 2024), https://perma.cc/2LBP-TNL7. Browsers also provide all users with "some control over the information websites collect." FTC, How Websites and Apps Collect and Use Your Information, https://perma.cc/63KN-FZUR.

d. App-Level Restrictions. NetChoice members have developed their own tools that allow parents to set further restrictions on their minor children's use of the websites. Internet Matters, Parental Control Guides (collecting parental-control guides for "social media" and "entertainment and search engines"). In addition to the steps described above, Meta has developed its "Family Center," which provides for parental supervision on Instagram. Meta, Family Center, https://perma.cc/4P4W-BY2G. Using these tools, parents can, among other things, (1) see their minor children's followers and who their minor children are following; (2) see how long the minor spends on Instagram; and (3) set time limits and scheduled breaks. *Id.* YouTube offers similar features, such as, *e.g.*, a "supervised experience" for teens, allowing parents (1) to receive email notifications when a teen uploads a video or starts a livestream; (2) to gain insights into their teen's channel activity (such as uploads, comments, and subscriptions); and (3) an option to link accounts between a parent and teen. YouTube, My Family, https://perma.cc/5UJ6-P3UY. Pinterest, likewise, provides parents of minors "under 16" the ability to "set[] up a 4-digit passcode" that "lock[s] certain settings related to account management, privacy and data, and social permissions on [a] teen's Pinterest account." Pinterest, Resources for Parents and Caregivers of Teens, https://perma.cc/C75X-XUHY ("Pinterest Parent Resources"). And for teenaged users, Snapchat

provides parents and guardians the "Family Center." *See* Snapchat Support, What is Family Center, https://perma.cc/VMM6-4BE7.

10. NetChoice members take the safety of all users seriously and place a special emphasis on minors' safety, including through the following means:

a. **Limiting access by age.** All NetChoice members prohibit minors younger than 13 from accessing their main services, and the services that are regulated by the Act. Some members, however, offer separate experiences for users under 13 geared for that specific age group, which are not at issue in this case.

b. **Minor-Specific Policies.** Some NetChoice members have policies or practices specifically for minors' accounts on their websites. Instagram, for instance, states that it has "Instagram Teen Accounts . . . that are automatically set to more protective teen safety settings" for minor teenagers. *See* Instagram, About Instagram Teen Accounts, https://perma.cc/P6QM-TYSM. Similarly, YouTube publicizes that it has multiple "features to support teen well-being," such as "[t]ake-a-break notifications," "[b]edtime reminders," auto-play being disabled by default, and limitations on the "recommendation of select types of content that can be problematic if viewed in repetition." YouTube, Choices for Every Family, https://perma.cc/29CJ-CJ57.[3]

11. Any minor-specific policies and parental tools exist alongside the websites' generally applicable "content-moderation" policies. NetChoice members have chosen to balance disseminating large amounts of user-created expression while also limiting publication of speech that NetChoice members consider harmful, objectionable, or simply not conducive to their communities. NetChoice members publish and enforce varied content-moderation policies that address the

[3] This Declaration cites portions of NetChoice members' policies. Those policies are lengthy and nuanced (and otherwise publicly available), so this Declaration does not purport to fully summarize the policies.

publication of such prohibited content. Based on NetChoice's research, the "rate of violative content removed from platforms and the level at which it is removed prior to being seen by users makes clear companies are successfully prioritizing the safety of their users." NetChoice, By the Numbers: What Content Social Media Removes and Why 13 (2021), https://perma.cc/7E63-ECRT ("By the Numbers"). Members' content moderation affects both what is available on the website to those looking for it (*e.g.*, through search) *and* what shows up in users' feeds or on users' homepages.

12. To that end, NetChoice's members already have policies in place to block or limit the publication of content that the Act regulates.

13. The Act restricts expression that "promotes or facilitates[,] . . . [c]onsistent with evidence-informed medical information, the following: self-harm, eating disorders, substance use disorders, and suicidal behaviors." Act § 6(1)(a). NetChoice's members already have policies about this prohibited speech, sometimes in nearly identical terms:

a. Dreamwidth: Dreamwidth **does not allow** "Content that is harmful, threatening, abusive, hateful, invasive to the privacy and publicity rights of any person, or that violates any applicable local, state, national, or international law, including any regulation having the force of law." Dreamwidth, Terms of Service, https://perma.cc/G39R-LTR6.

b. Meta (Facebook and Instagram): Meta **prohibits** speech that "intentionally or unintentionally celebrate[s] or promote[s] suicide, self-injury or eating disorders." Meta Transparency Center, Suicide, Self-Injury, and Eating Disorders, https://perma.cc/G9EL-VR7J. But Meta does "allow people to discuss these topics because [Meta] want[s] [its] services to be a space where people can share their experiences, raise awareness about these issues, and seek support from one another." *Id.* Thus, Meta **prohibits** "[c]ontent that promotes, encourages, coordinates, or provides instructions for suicide, self-injury, or eating disorders." *Id.* But Meta may allow "content that depicts older instances of self-harm such as healed cuts or other non-graphic self-injury imagery in a self-injury, suicide or recovery context" (although sometimes this content appears behind "sensitivity screen[s]"). *Id.*

c. Nextdoor: Nextdoor has resources available for suicide and self-harm prevention. Nextdoor Help Center, Suicide & Self-Harm Prevention, https://perma.cc/33JM-75AT?type=image.

d. Pinterest: Pinterest **prohibits** "content that displays, rationalizes or encourages suicide, self-injury, [or] eating disorders." Pinterest, Community Guidelines, https://perma.cc/73Z6-KMDD. Accordingly, Pinterest expressly **prohibits**: "self-harm instructions," "suicidal thinking and quotes," "graphic or otherwise triggering imagery or descriptions of self-harm," "promotion of self-harm," "images of accessories used to self-harm," "negative self-talk and insensitive humor about self-harming behavior," and "suicide pacts, challenges and hoaxes," among other things. *Id.*

e. Reddit: Reddit **prohibits** "[p]ost[s] containing imagery or text that incites, glorifies, or encourages self-harm or suicide." Reddit, Do Not Post Violative Content, https://perma.cc/J2LE-9JVA ("Reddit, Violative Content").

f. Snap: Snap **prohibits** "the glorification of self-harm, including the promotion of self-injury, suicide, or eating disorders." Snap Privacy and Safety Hub, Community Guidelines, https://perma.cc/A4SB-Y8MK; *see* Snap Privacy and Safety Hub, Threats, Violence, & Harm, https://perma.cc/H4VT-G2V7 (noting that Snap **prohibits** "content . . . that encourages or glorifies self-harm, such as suicide, self-mutilation, or eating disorders").

g. X: X prohibits "promot[ing] or encourage[ing] suicide or self-harm," including "eating disorders" and "sharing information, strategies, methods or instructions that would assist people to engage in self-harm and suicide." X, X Help Center: Suicide and Self-Harm Policy, https://perma.cc/SKD8-YS5Y.

h. YouTube: YouTube **does not allow** "content on YouTube that promotes suicide, self-harm, or eating disorders, that is intended to shock or disgust, or that poses a considerable risk to viewers." YouTube Help, Suicide, Self-Harm, and Eating Disorders Policy, https://perma.cc/Z83H-WNAG.

14. The Act restricts expression that "promotes or facilitates . . . [p]atterns of use that indicate or encourage substance abuse or use of illegal drugs." Act § 6(1)(b). NetChoice's members already have policies concerning substance use and abuse:

a. Dreamwidth: Dreamwidth **does not allow** "Content that is harmful, threatening, abusive, hateful, invasive to the privacy and publicity rights of any person, or that violates any applicable local, state, national, or international law, including any regulation having the force of law." Dreamwidth, Terms of Service, https://perma.cc/G39R-LTR6.

b. Meta (Facebook and Instagram): Meta **prohibits** various kinds of content related to substance use, including content that "[c]oordinates or promotes (by which we mean speaks positively about, encourages the use of, or provides instructions to use or make) non-medical drugs." Meta Transparency Center, Restricted Goods and Services, https://perma.cc/A9XS-4EBW. Meta also **prohibits** content that "[a]dmits to personal use without acknowledgment of or reference to recovery, treatment, or other assistance to combat usage," but even with such an acknowledgement or reference, this content "may not speak positively about, encourage use of, coordinate or provide instructions to make or use non-medical drugs." *Id.*

c. Nextdoor: Nextdoor **prohibits** "purchase, trade, sale or distribution" of "[a]lcohol, including homebrews," "[d]rug paraphernalia," "[m]arijuana and CBD," "[p]rescription drugs and prescription medical devices," "[t]obacco," and "[o]ther controlled substances." Nextdoor Help Center, List of Prohibited Goods and Services, https://perma.cc/58HR-H482?type=image. Nextdoor also **prohibits** "[s]elling, soliciting, or offering any illegal goods or services." Nextdoor Help Center, Do Not Engage in Harmful Activity, https://perma.cc/Q8FP-CD4E?type=image.

d. Pinterest: Pinterest **prohibits** "content that displays, rationalizes or encourages . . . substance abuse." Pinterest, Community Guidelines, https://perma.cc/73Z6-KMDD. Pinterest also **prohibits** "trading or selling . . . products or substances that can cause harm when used, altered or manufactured irresponsibly," including "alcohol, tobacco, drugs . . . including chemical precursors and pill presses, punches and dies." *Id.*

e. Reddit: Reddit **prohibits** "depictions" of "the maltreatment of minors," including content "encouraging or forcing a child to use drugs, ingest a dangerous substance or engage in a dangerous challenge." Reddit, Do Not Share Content Depicting or Promoting Neglect, Physical, or Emotional Abuse Against Minors, https://perma.cc/TH86-3FWD. In addition, Reddit **prohibits** "posting illegal content or soliciting or facilitating illegal or prohibited transactions." Reddit, Reddit Rules, https://perma.cc/RNQ3-8RZU.

f. Snap: Snap **prohibits** "promoting, facilitating, or participating in criminal activity, such as buying, selling, exchanging, or facilitating sales of illegal or regulated drugs." Snap Privacy and Safety Hub, Community Guidelines, https://perma.cc/A4SB-Y8MK.

g. X: X **prohibits** "selling, buying, or facilitating transactions in illegal goods or services," including "drugs and controlled substances." X, X Help Center: Illegal or Certain Regulated Goods or Services, https://perma.cc/3JNZ-PB2L. And for advertisers specifically, "X prohibits the promotion of drugs and drug paraphernalia." X Business, Drugs and Drug Paraphernalia, https://perma.cc/Z8SM-3MYE.

h. YouTube: YouTube **prohibits** various kinds of speech related to substance abuse. YouTube **prohibits** (1) "non-educational" "displays of hard drug use"; (2) "making hard drugs"; (3) "minors using alcohol or drugs"; (4) "selling hard drugs"; and (5) "selling soft drugs." YouTube Help, Illegal or Regulated Goods or Services Policies, https://perma.cc/J5DW-7K7Z. Likewise, YouTube **prohibits** "content instructing how to purchase drugs on the dark web" and "content that promotes a product that contains drugs, nicotine, or a controlled substance." *Id.* Additionally, YouTube **prohibits** expression that "aims to directly sell, link to, or facilitate access to" "alcohol," "controlled narcotics and other drugs," "nicotine, including vaping products," and "pharmaceuticals without a prescription." *Id.*

15. The Act restricts expression that "promotes or facilitates . . . [s]talking, physical violence, online bullying, or harassment." Act § 6(1)(c). NetChoice's members already have policies about stalking, bullying, and harassment:

a. Dreamwidth: Dreamwidth **does not allow** "Content that is harmful, threatening, abusive, hateful, invasive to the privacy and publicity rights of any person, or that violates any applicable local, state, national, or international law, including any regulation having the force of law." Dreamwidth, Terms of Service, https://perma.cc/G39R-LTR6.

b. Meta (Facebook and Instagram): Meta **prohibits** "bullying and harassment," using a sophisticated, multi-tier policy that covers everything from "making threats and releasing personally identifiable information, to "sending threatening messages and making unwanted malicious contact," to "content that's meant to degrade or shame." Meta Transparency Center, Bullying and Harassment, https://perma.cc/6DVS-LFDZ. These "policies provide heightened protection for anyone under the age 18, regardless of user status." *Id.*

c. Nextdoor: Nextdoor **prohibits** "[a]ttacking, berating, bullying, belittling, insulting, harassing, threatening, trolling, or swearing at others or their views," as well as "public shaming." Nextdoor Help Center, Be Respectful to Your Neighbors, https://perma.cc/H86Q-RM3S?type=image. Nextdoor also **prohibits** "[t]hreatening someone and/or their pet's safety," "[p]osting comments that encourage violence against others," and "[t]hreatening someone's privacy or security." Nextdoor Help Center, Do Not Engage in Harmful Activity, https://perma.cc/KMF7-EN2T?type=image.

d. Pinterest: Pinterest **prohibits** content that "insult[s], hurt[s] or antagonize[s] individuals or groups of people," including "criticisms involving name-calling, profanity and other insulting language or imagery." Pinterest, Community Guidelines, https://perma.cc/73Z6-KMDD. Pinterest also **prohibits** "harassing content or behavior" in messages. *Id.*

e. Reddit: Reddit "**do[es] not tolerate** the harassment, threatening, or bullying of people on [its] site; nor do[es] [it] tolerate communities dedicated to this behavior." Reddit, Do Not Threaten, Harass, or Bully, https://perma.cc/64J7-FP7L.

f. Snap: Snap **prohibits** all "bullying or harassment," including "all forms of sexual harassment," such as "sending unwanted sexually explicit, suggestive, or nude images to other users." Snap Privacy and Safety Hub, Community Guidelines, https://perma.cc/A4SB-Y8MK.

g. X: X **prohibits** "target[ing] others with abuse or harassment, or encourag[ing] other people to do so." X, X Help Center: Abuse and Harassment, https://perma.cc/9DQZ-A4Z2.

h. YouTube: YouTube **prohibits** expression that "threaten[s] someone's physical safety" or "targets someone with prolonged insults or slurs based on their physical traits or protected group status." YouTube Help, Harassment & Cyberbullying Policies, https://perma.cc/DWQ7-HFM3. In particular, YouTube **prohibits** expression "uploaded with the intent to shame, deceive or insult a minor." *Id.* YouTube also prohibits "content that promotes violence or hatred against individuals or groups based on" certain attributes. YouTube Help, Hate Speech Policy, https://perma.cc/N7N3-UCLL.

16. The Act restricts expression that "promotes or facilitates . . . [g]rooming, trafficking, child pornography, or other sexual exploitation or abuse." Act § 6(1)(d). NetChoice's members already have policies about this content.

a. Dreamwidth: Dreamwidth **does not allow** "Content that is harmful, threatening, abusive, hateful, invasive to the privacy and publicity rights of any person, or that violates any applicable local, state, national, or international law, including any regulation having the force of law." Dreamwidth, Terms of Service, https://perma.cc/G39R-LTR6. Dreamwidth's policies also require users to agree that "[i]f Content is deemed illegal by any law having jurisdiction over" a user, the user "agree[s] that [Dreamwidth] may submit any necessary information to the proper authorities." *Id.*

b. Meta (Facebook and Instagram): Meta **prohibits** a vast range of "content or activity that sexually exploits or endangers children," including: "[c]hild sexual exploitation," "[s]olicitation," "[i]nappropriate interactions with children," "[e]xploitative intimate imagery and sextortion," "[s]exualization of children," "[c]hild nudity," and "[n]on-sexual child abuse." Meta Transparency Center, Child Sexual Exploitation, Abuse, and Nudity, https://perma.cc/FYH9-UHPN. Meta also prohibits "content that praises, supports, promotes, advocates for, provides instructions for or encourages participation in non-sexual child abuse." *Id.*

c. Nextdoor: Nextdoor's policies against off-topic and sexual content **prohibit** the kind of content covered by this requirement. *See, e.g.*, Nextdoor Help Center, Do Not Engage in Harmful Activity, https://perma.cc/9C8S-2UQW ("No graphic, violent, sexually explicit, or adult content."). Notably, Nextdoor has relatively few instances of CSAM. In 2023, for instance, Nextdoor made only six reports to the National Center for Missing & Exploited Children. *See* Nextdoor, Transparency Report 2023 at 9, https://perma.cc/AP53-BTH4.

d. Pinterest: Pinterest **prohibits** "child sexual exploitation of any kind" and "enforce[s] a strict, zero-tolerance policy for any content—including imagery, video, or text— or accounts that might exploit or endanger minors." Pinterest, Community Guidelines, https://perma.cc/73Z6-KMDD. "Pinterest prohibits not just illegal child sexual abuse material (CSAM), but goes a step further to prohibit any content that contributes to the sexualization of minors, including in imagery and text. We also work closely with the National Center for Missing and Exploited Children (NCMEC) to combat this type of activity, and report content violations as required under the law." *Id.* Accordingly, Pinterest "remove[s]": (1) "Illegal child sexual abuse material"; (2) "Sexualization or sexual exploitation of minors, like grooming, sexual remarks or inappropriate imagery–including in the form of cartoons and anime"; (3) "Nude and sexual imagery involving minors"; (4) "Content that facilitates unsolicited contact with minors, such as email addresses, phone numbers and physical addresses, to prevent contact intending to start an exploitative relationship"; (5) "Comments on imagery of minors that are inappropriate or sexualized"; and (6) "The intentional misuse of content depicting minors that is otherwise non-violating. For example, we will deactivate users who save otherwise non-violating content into collections or in other contexts that suggest the intent is sexualization of minors." *Id.*

e. Reddit: Reddit "**prohibits** any sexual or suggestive content, and predatory or inappropriate behavior, involving minors (i.e., people under 18 years old) or someone who appears to be a minor." Reddit, Do Not Share Sexual or Suggestive Content Involving Minors, or Engage in any Predatory or Inappropriate Behavior with Minors, https://perma.cc/R3VZ-Y27H.

f. Snap: Snap **prohibits** "any activity that involves sexual exploitation or abuse of a minor, including sharing child sexual exploitation or abuse imagery, grooming, or sexual extortion (sextortion), or the sexualization of children." Snap Privacy and Safety Hub, Community Guidelines, https://perma.cc/A4SB-Y8MK. Snap "report[s] all identified instances of child sexual exploitation to authorities, including attempts to engage in such conduct." *Id.*; *see also* Snap Privacy and Safety Hub, Illegal or Regulated Activities, https://perma.cc/J9YV-MXQM (noting that Snap **prohibits** "promoting or facilitating any form of exploitation, including human trafficking or sex trafficking").

g. X: X has "**zero tolerance** towards any material that features or promotes child sexual exploitation." X, X Help Center: Child Sexual Exploitation Policy, https://perma.cc/GEJ3-BT7T. X includes a long list of enumerated examples of this policy, which is better summarized by what it does *not* include: "Discussions related to child sexual exploitation are permitted, provided they don't normalise, promote or glorify child sexual exploitation **in any way**." *Id.*

h. YouTube: YouTube **prohibits** all "sexually explicit content featuring minors and content that sexually exploits minors." YouTube Help, Child Safety Policy, https://perma.cc/Q4PQ-GP7M. YouTube "report[s] content containing child sexual abuse imagery to the National Center for Missing and Exploited Children, who work with global law enforcement agencies." *Id.*

17. The Act restricts expression that "promotes or facilitates . . . [i]ncitement of violence." Act § 6(1)(e). NetChoice members have policies addressing content inciting or otherwise encouraging violence:

a. Dreamwidth: Dreamwidth **does not allow** "Content that is harmful, threatening, abusive, hateful, invasive to the privacy and publicity rights of any person, or that violates any applicable local, state, national, or international law, including any regulation having the force of law." Dreamwidth, Terms of Service, https://perma.cc/G39R-LTR6.

b. Meta (Facebook and Instagram): Meta **prohibits** "language that incites or facilitates violence and credible threats to public or personal safety." Meta Transparency Center, Violence and Incitement, https://perma.cc/TDK5-JZ5F. Meta's policies also contain "[a]dditional protections for . . . [a]ll [c]hildren" and for "persons or groups based on their protected characteristic(s)." *Id.*

c. Nextdoor: Nextdoor **prohibits** "[t]hreatening someone and/or their pet's safety," "[p]osting comments that encourage violence against others," and "[t]hreatening someone's

privacy or security." Nextdoor Help Center, Do Not Engage in Harmful Activity, https://perma.cc/Q8FP-CD4E?type=image.

d. Pinterest: Pinterest **prohibits** "threats or language that glorifies violence," "false or misleading content that encourages turning individuals, groups of people, places or organizations into targets of . . . physical violence," "content that shows the use of violence," "and "content and accounts that encourage, praise, promote, or provide aid to dangerous actors or groups and their activities." Pinterest, Community Guidelines, https://perma.cc/73Z6-KMDD.

e. Reddit: Reddit prohibits "content that encourages, glorifies, incites, or calls for violence or physical harm against an individual." Reddit, Do Not Post Violent Content, https://perma.cc/ZDH8-TCTE.

f. Snap: Snap **prohibits** "[e]ncouraging or engaging in violent or dangerous behavior." Snap Privacy and Safety Hub, Threats, Violence, & Harm, https://perma.cc/H4VT-G2V7. Snap also **prohibits** "content that glorifies, or risks inciting, violent or harmful behavior toward people or animals." *Id.*

g. X: X **prohibits** "[i]nciting, promoting or encouraging others to commit acts of violence or harm, including encouraging others to hurt themselves or inciting others to commit atrocity crimes such as crimes against humanity, war crimes or genocide." X, X Help Center: Violent Content, https://perma.cc/B5QF-NAMF.

h. YouTube: YouTube **prohibits** content that "incit[es] others to commit violent acts against individuals or a defined group of people." YouTube Help, Violent or Graphic Content Policies, https://perma.cc/7S8N-VY9G. YouTube also prohibits "content that promotes violence or hatred against individuals or groups based on" certain attributes. YouTube Help, Hate Speech Policy, https://perma.cc/N7N3-UCLL.

18. The Act restricts expression that "promotes or facilitates . . . [a]ny other illegal conduct." Act § 6(1)(f). NetChoice members have policies addressing content about illegal conduct. Of note, NetChoice members operate across the United States and internationally, and what may be legal in one jurisdiction may be illegal in another. In addition to the content encompassed by the policies above, NetChoice members have various policies that address content involving illegal conduct:

a. Dreamwidth: Dreamwidth **does not allow** "Content . . . that violates any applicable local, state, national, or international law, including any regulation having the force of law." Dreamwidth, Terms of Service, https://perma.cc/G39R-LTR6.

b. Meta (Facebook and Instagram): Facebook's "Community Standards" **prohibit** a range of content related to illegal activity, including "[c]oordinating [h]arm and [p]romoting

[c]rime," "[f]raud, [s]cams, and [d]eceptive [p]ractices," and "[s]exual [e]xploitation" of adults and children. Meta Transparency Center, Facebook Community Standards, https://perma.cc/7NLZ-Q5EF. Instagram **prohibits** "[i]llegal [c]ontent" including content that "support[s] or prais[es] terrorism, organized crime, or hate groups," among other things. Instagram Community Guidelines FAQs, https://perma.cc/TMD6-H3K6. In general, Meta also has a policy of **restricting** reported content that "goes against local law." Meta Transparency Center, How We Assess Reports of Content Violating Local Law, https://perma.cc/2SEU-S9JQ. Meta also **prohibits** ads that do not "comply with the laws in their jurisdiction," or "sell illegal or unsafe substances." Meta Transparency Center, Introduction to the Advertising Standards, https://perma.cc/57G9-C3UF.

c. Nextdoor: Nextdoor's community guidelines **prohibit** various forms of illegal activity, including specific prohibitions against threats, fraud and "[s]elling, soliciting, or offering any illegal goods or services, even if they do not explicitly appear on the prohibited list." Nextdoor Help Center, Do Not Engage in Harmful Activity, https://perma.cc/Q8FP-CD4E?type=image; *see* Nextdoor Help Center, Reasons for Reporting Content, https://perma.cc/CH24-QC3A (similar).

d. Pinterest: Pinterest **prohibits** "content and accounts that encourage, praise, [or] promote" various illegal enterprises, including "terrorist organizations[,] gangs and other criminal organizations." Pinterest, Community Guidelines, https://perma.cc/73Z6-KMDD. Pinterest also **prohibits** various kinds of specific illegal activities, such as "exploitation of people or animals" and "other illegal commercial exploitation." *Id.* Pinterest's community guidelines state that users are **not allowed** to "do anything or post any content that violates laws or regulations." *Id.*; *see id.* ("Be sure to follow all relevant laws and regulations.").

e. Snap: Snap users are **not allowed** to "use Snapchat for any illegal activity." Snap Privacy and Safety Hub, Illegal or Regulated Activities, https://perma.cc/J9YV-MXQM. Accordingly, Snap **prohibits** "promoting, facilitating, or participating in criminal activity, such as buying, selling, exchanging, or facilitating sales of illegal or regulated drugs, contraband (such as child sexual abuse or exploitation imagery), weapons, or counterfeit goods or documents." *Id.* Snap also **prohibits** "the illegal promotion of regulated goods or industries, including unauthorized promotion of gambling, tobacco products, and alcohol." *Id.*

f. Reddit: Reddit users must "[k]eep it legal" and **may not** "post[] illegal content or solicit[] or facilitat[e] illegal or prohibited transactions." Reddit, Reddit Rules, https://perma.cc/RNQ3-8RZU.

g. X: X's policies **prohibit** users from "us[ing] our service for any unlawful purpose or in furtherance of illegal activities." X, X Help Center: The X Rules, https://perma.cc/5CPH-46ZE. "This includes selling, buying, or facilitating transactions in illegal goods or services, as well as certain types of regulated goods or services." *Id.*; *see also* X, X Help Center: Illegal or Certain Regulated Goods or Services, https://perma.cc/3JNZ-PB2L.

h. YouTube: YouTube **prohibits** "content that encourages dangerous or illegal activities that risk serious physical harm or death." YouTube Help, Harmful or Dangerous Content Policy, https://perma.cc/72R6-Q7SZ. YouTube also prohibits "content intended to sell certain

regulated goods and services," such as "stolen credit cards," "controlled narcotics and other drugs," "explosives," and "counterfeit documents," among many other things. YouTube Help, Illegal or Regulated Goods or Services Policies, https://perma.cc/J5DW-7K7Z.

19. The Act restricts "[h]armful Material." Act § 6(1). Even if not classified as "obscenity for minors" or "harmful material," NetChoice's members already have policies in place to prohibit publishing obscenity to minors or all users:

a. Dreamwidth: Dreamwidth **does not allow** "Content that is harmful, threatening, abusive, hateful, invasive to the privacy and publicity rights of any person, or that violates any applicable local, state, national, or international law, including any regulation having the force of law." Dreamwidth, Terms of Service, https://perma.cc/G39R-LTR6. Although Dreamwidth allows adult content, it allows users to set age restriction filters marking posts as "Adult Content," which cannot be accessed by persons who are under 18 years old. Dreamwidth, How Do I Set Age Restriction Filters on My Journal or Entry?, https://perma.cc/88N6-AM9A. Dreamwidth also allows users to utilize a "Safe Search Filter" and settings requiring a confirmation notice before displaying adult content. Dreamwidth, What Is "Adult Content"? How Can I Keep From Seeing It?, https://perma.cc/82WS-TVGR.

b. Meta (Facebook and Instagram): Meta **prohibits** "[i]magery . . . of adult nudity" and "[i]magery of adult sexual activity," including even "[i]mplicit sexual activity or stimulation." Meta Transparency Center, Adult Nudity and Sexual Activity, https://perma.cc/9GV8-CAVB. For other content, such as "[r]eal-world art, where [i]magery depicts . . . sexual activity," Meta **restricts** content by "limit[ing] the ability to view the content to adults, ages 18 and older." *Id.*

c. Nextdoor: Nextdoor **prohibits** "sexually explicit or suggestive content," "adult content," "photos that contain nudity," and "any content that facilitates, encourages, or coordinates commercial sexual services." Nextdoor Help Center, Do Not Engage in Harmful Activity, https://perma.cc/Q8FP-CD4E?type=image. Nextdoor also **prohibits** "[s]exual content," including "[a]dult toys or products," "[p]ornography," and "[p]rostitution or escort services." Nextdoor Help Center, List of Prohibited Goods and Services, https://perma.cc/58HR-H482?type=image.

d. Pinterest: Pinterest **prohibits** "adult content, including pornography and most nudity." Pinterest, Community Guidelines, https://perma.cc/73Z6-KMDD. Consequently, Pinterest "remove[s] or limit[s] the distribution of mature and explicit content," including "nudity"; "sexualized content, even if the people are clothed or partially clothed"; "graphic depictions of sexual activity in imagery or text"; and "fetish imagery." *Id.* Pinterest does not prohibit all nudity, however. *See id.* "For instance, nudity in paintings and sculptures and in science and historical contexts is okay. Content about breastfeeding and mastectomies is also allowed." *Id.*

e. Reddit: Reddit limits any "content reserved for mature/18+ audiences (e.g. sexually explicit)" to those 18 years or older. Reddit, Moderator Code of Conduct, https://perma.cc/8H87-C6LT.

f. Snap: Snap **prohibits** "promoting, distributing, or sharing pornographic content, as well as commercial activities that relate to pornography or sexual interactions (whether online or offline)." Snap Privacy and Safety Hub, Community Guidelines, https://perma.cc/A4SB-Y8MK. But "breastfeeding and other depictions of nudity in non-sexual contexts are generally permitted." *Id.*

g. X: X **restricts** users' ability to "share . . . adult nudity or sexual behavior," requiring that such material be "properly labeled and not prominently displayed" in "highly visible places such as profile photos or banners" or "live video." X, X Help Center: Adult Content, https://perma.cc/C2XJ-7Q9N. Though X permits adult users to view nudity and even pornographic content, it restricts minors' access to such material. *Id.*; *see also* X, X Help Center: Notices on X and What They Mean, https://perma.cc/7XRC-ZP96. Moreover, X **prohibits** all "[n]on-consensual nudity," "[p]romoting or soliciting sexual services," "[c]hild sexual exploitation," "[v]iolent sexual conduct," "[u]nwanted sexual content & graphic objectification," and "[b]estiality and necrophilia." X, X Help Center: Adult Content, https://perma.cc/C2XJ-7Q9N.

h. YouTube: YouTube **prohibits** "explicit content meant to be sexually gratifying," including the "depiction of clothed or unclothed genitals, breasts, or buttocks that are meant for sexual gratification." YouTube Help, Nudity and Sexual Content Policy, https://perma.cc/7HVY-MMZW. YouTube also prohibits "pornography, the depiction of sexual acts, or fetishes that are meant for sexual gratification." *Id.*

20. NetChoice's members also have policies against other forms of harmful, objectionable, or just off-topic speech:

a. Dreamwidth: Dreamwidth **does not allow** "Content that is harmful, threatening, abusive, hateful, invasive to the privacy and publicity rights of any person, or that violates any applicable local, state, national, or international law, including any regulation having the force of law." Dreamwidth, Terms of Service, https://perma.cc/G39R-LTR6. Dreamwidth's policies also require users to agree that "[i]f Content is deemed illegal by any law having jurisdiction over" a user, the user "agree[s] that [Dreamwidth] may submit any necessary information to the proper authorities." *Id.* Moreover, Dreamwidth has the "right" in its "sole discretion, to remove . . . any Content from the service." *Id.*

b. Meta (Facebook and Instagram): Among other things, Meta **prohibits** hate speech. Meta Transparency Center, Hate Conduct, https://perma.cc/GWT8-MNFY. As part of this broad prohibition, Meta prohibits the use of slurs—though Meta "recognize[s]" there are situations in which slurs may be permissible because "people sometimes share content that includes slurs or someone else's speech in order to condemn the speech or report on it" and slurs can be "used self-referentially or in an empowering way." *Id.*

c. Nextdoor: Among other things, Nextdoor **prohibits** "racist behavior, discrimination, and hate speech of any kind." Nextdoor Help Center, Policies to Prevent Racism & Discrimination, https://perma.cc/L98B-WGU2?type=image. More generally, "Nextdoor is intended primarily for neighbors to share community-related information," which means that "[d]iscussions about personal interests in the main newsfeed should be limited unless they are

directly related to the neighborhood." Nextdoor Help Center, What Should I Post About on Nextdoor?, https://perma.cc/5E7Q-5TLC?type=image.

d. Pinterest: Among other things, Pinterest **prohibits** "hateful content [and] the people and groups that promote hateful activities," "content that shows the use of violence," "irresponsible and harmful animal tourism or otherwise exploitative practices like organized animal fighting," and "harmful pranks or challenges that risk imminent physical harm or extreme emotional distress, especially if showing or encouraging the participation of minors." Pinterest, Community Guidelines, https://perma.cc/73Z6-KMDD.

e. Reddit: Among other things, under Reddit's community-led approach to content moderation, Reddit's policies require users to "[p]ost authentic content into communities where you have a personal interest, and do not cheat or engage in content manipulation (including spamming, vote manipulation, ban evasion, or subscriber fraud) or otherwise interfere with or disrupt Reddit communities." Reddit, Reddit Rules, https://perma.cc/RNQ3-8RZU. That allows individual communities to moderate content for, *e.g.*, being off topic or low effort.

f. Snap: Among other things, Snap **prohibits** "fraud and other deceptive practices" and "spreading false information that causes harm or is malicious, such as denying the existence of tragic events, unsubstantiated medical claims, undermining the integrity of civic processes, or manipulating content for false or misleading purposes." Snap Privacy and Safety Hub, Community Guidelines, https://perma.cc/A4SB-Y8MK; *see* Snap Privacy and Safety Hub, Harmful False or Deceptive Information, https://perma.cc/T2NB-NLEZ (similar).

g. X: Among other things, X **prohibits** (1) various kinds of "hateful conduct," X, X Help Center: Hateful Conduct, https://perma.cc/TT9D-9E38; (2) "hoping for others to die, suffer illnesses, tragic incidents, or experience other physically harmful consequences," X, X Help Center: Violent Content, https://perma.cc/B5QF-NAMF; and (3) "Posts that include manifestos or other similar material produced by perpetrators [of violent acts] . . . , even if the context is not abusive," X, X Help Center: Perpetrators of Violent Attacks, https://perma.cc/WX9Y-6BB2.

h. YouTube: Among other things, YouTube has policies that **prohibit** and otherwise address (1) "vulgar language," YouTube Help, Vulgar Language Policy, https://perma.cc/N9T5-8BHA; (2) "hate speech," YouTube Help, Hate Speech Policy, https://perma.cc/N7N3-UCLL; and (3) "violent or gory content intended to shock or disgust viewers," YouTube Help, Violent or Graphic Content Policies, https://perma.cc/7S8N-VY9G.

21. All of that said, content moderation is very difficult to do perfectly, especially at the scale of many of NetChoice's members. There are literally countless pieces of content on the Internet, and not all content is suitable for all audiences on all websites in all contexts. Thus, content moderation requires the removal of objectionable content from members' websites. NetChoice has produced a report detailing members' successes in moderating the vast scope of objectionable

and harmful content that specific member companies have blocked or removed from their websites. *See* By the Numbers.

22. For instance, in just a six-month span from July to December 2020, Facebook (≈5.7 billion), Instagram (≈65.3 million), Pinterest (≈2.1 million), Snapchat (≈5.5 million), YouTube (≈17.2 million), and X (≈4.5 million) removed approximately 5.9 *billion* posts. *See id.*at 2. Nearly half of those removals (approximately 2.9 billion removals) were for spam. *See id.* at 4.

23. Members work to remove violative content quickly before many (if any) users see the content. *See id.* at 13. "Platforms enable users to report posts and accounts, but social media companies acknowledge that taking down content is not sufficient if the content in question reaches a wide audience prior to removal. Because of this, companies report not only the number of posts removed but also the degree to which they were seen prior to removal. While platforms enable users to report posts and accounts, the aim of limiting exposure requires that a combination of artificial intelligence and human reviewers take down violating content as quickly as possible after it was posted. . . . This proactive approach to removal mitigates the threat of spam, violent, or otherwise offensive content being spread beyond the account responsible for the original post." *Id.* at 5. NetChoice's members have been largely successful, especially for the most harmful content. *See id.* at 5-6. For example, on Facebook, "[t]he proactive rate for severe violations such as child sexual exploitation, terrorist organizations, and violent or graphic content were all 99-100%." That means this content was "found or flagged by Facebook prior to being reported by users." *Id.*

24. Regardless of the scale of the websites, content moderation is often difficult for multiple reasons. For example, websites disseminate different forms of content that raise their own content-moderation difficulties. These different forms of content include text, audio, and video. Furthermore, content moderation often requires contextual determinations. Whether a given piece

of content violates a website's policies can turn on a complicated interaction between the intent of the user, the content itself, the social and cultural context, the context on the service, and the effect on the reader. Further complicating this task is that many members operate worldwide, and thus must take into account different languages and cultures. Consequently, overreliance on automated systems of content moderation may result in overinclusive removal of content that may not violate websites' policies. Alternatively, removing—or restricting access to—too little violative content may make the websites less hospitable to users and advertisers. Finally, malicious actors always attempt to find ways to avoid moderation to upload violative content; so websites must constantly innovate.

IV. The Act's effect on NetChoice members and the Internet.

25. I understand that the Act was signed into law on April 30, 2024, and that the Act took effect July 1, 2024.

26. I understand this Court preliminarily enjoined Defendant's enforcement of the Act against NetChoice and its members on July 1, 2024.

27. I understand Defendant can enforce the Act against NetChoice and its members beginning May 8, 2025, when the Fifth Circuit's appellate mandate issues.

28. I understand that the Act regulates "digital service provider[s]." Act § 3. A "digital service" is "a website, an application, a program, or software that collects or processes personal identifying information with Internet connectivity." Act § 2(a). A "digital service provider" is any "person who: (i) [o]wns or operates a digital service; (ii) [d]etermines the purpose of collecting and processing the personal identifying information of users of the digital service; and (iii) [d]etermines the means used to collect and process [such] information of users of the digital service." Act § 2(b).

29. I understand the Act only applies to a digital service that:

> (a) Connects users in a manner that allows users to socially interact with other users on the digital service;
>
> (b) Allows a user to create a public, semi-public or private profile for purposes of signing into and using the digital service; and
>
> (c) Allows a user to create or post content that can be viewed by other users of the digital service, including sharing content on:
>
> > (i) A message board;
> >
> > (ii) A chat room; or
> >
> > (iii) A landing page, video channel or main feed that presents to a user content created and posted by other users.

Act § 3(1).

30. According to these definitions, the Act covers at least the following NetChoice members: (1) Dreamwidth; (2) Meta, which owns and operates Facebook and Instagram; (3) Nextdoor; (4) Pinterest; (5) Reddit; (6) Snap Inc., which owns and operates Snapchat; (7) X; and (8) YouTube.

31. Each of these covered NetChoice members meets the Act's coverage criteria in Sections 2 and 3(1) and does not qualify for an exception in Section 3(2).

32. Each of these covered NetChoice members allows its account holders to upload and publicly post content (whether to all other users or to specified groups of account holders). Other account holders may then view that content and react to it, comment on it, or share it with others.

33. Each of these covered NetChoice members permits its account holders to engage in a wide variety of protected speech activities, subject to each website's unique content moderation policy.

34. NetChoice covered members' users access the covered websites to engage in protected speech activities, including speaking to others and viewing content created by others.

35. On these websites, the "interactive functionality" is not "incidental to" the service—the interactive functionality is the point of the service. *Cf.* § 3(2)(d).

36. In other words, each covered NetChoice member's website is what is commonly referred to as a "social media" website.

37. Each covered NetChoice member requires people to create an account to access some or all of the protected speech and speech-facilitating functions on its service.

38. Based on its definitions, the Act also regulates other "message board[s]" and online forums, § 3(1), on the Internet. People use such websites for myriad purposes including art, education, gaming, general interest, information gathering, professional activities, research, political engagement, and participation in religious services and communities.

39. Much like NetChoice members, these websites allow their account holders to upload and publicly post content (whether to all other users or to specified groups of account holders). Other account holders may then view that content and react to it, comment on it, or share it with others. As a result, users and account holders can engage in a wide variety of protected speech activities on the websites.

40. Conversely, under the Act's definitions, a wide variety of other kinds of websites are not regulated by the Act, including: (1) internet home pages; (2) search engines; (3) educational websites; (4) online shopping; (5) generative AI; (6) news and sports websites; (7) streaming services; (8) banking services; (9) professional networking websites; (10) general information websites; (11) online gaming; and (12) email and direct messaging, among others.

41. Accordingly, the Act does not regulate most of NetChoice's members' services, including those belonging to: Airbnb, Alibaba.com, Amazon.com, AOL, Duolingo, Earnin, eBay, Etsy, Expedia, Fluid Truck, Hims&Hers, HomeAway, Hotels.com, Lyft, Netflix, OfferUp, Orbitz,

PayPal, Pindrop, PrizePicks, StubHub, Swimply, TravelTech, Travelocity, Trivago, Turo, VRBO, VSBLTY, Waymo, Wing, and Yahoo!.

42. The Act's requirements are burdensome, will make it more difficult for NetChoice members to provide their websites to minors and adults, and will burden minors and adults' access to highly valuable and protected speech.

43. The compliance burdens are made all the more difficult by the fact that the Legislature gave regulated companies only two months to comply with the Act's requirements. The systems that the Act requires covered websites to adopt will take many covered websites much longer than two months to research, design, develop, test, and implement at scale.

44. The Fifth Circuit's vacatur gave covered websites even less time, providing only three weeks to come into compliance after the Act's enforcement was enjoined for nearly a year.

45. **Parental consent and age verification (Act § 4).** The Act's requirement that covered websites may not permit minors to be "account holder[s]" on their services without "express consent from a parent or guardian" will prove costly and difficult for NetChoice members to implement. Act § 4(2). This parental-consent requirement will impede minors and adults' access to protected speech. The Act further requires that covered websites "shall make commercially reasonable efforts to verify the age of the person creating an account with a level of certainty appropriate to the risks that arise from the information management practices of the digital service provider." Act § 4(1). This requirement to "verify . . . age[s]" will likewise impede minors and adults' access to valuable and protected speech. *Id.* On most members' covered services—as on many other covered websites—having an account is necessary to access either some or all of the protected speech and functionality on the service. Accordingly, each of these requirements burdens

access to protected speech. These requirements also pose at least four major hurdles for covered websites.

a. Most websites do not have compliance mechanisms in place to process parental consent or to "verify . . . age[s]." *Id.* Designing and maintaining comprehensive and foolproof systems to comply with the Act will be extremely costly, time-consuming, and resource-intensive.

b. As part of implementing mechanisms to comply with the Act, covered websites will be required to obtain and store sensitive personal identifying information about minors and their parents or guardians. This will significantly amplify the risks of data security breaches, necessitating even more investment in heightened cybersecurity measures.

c. Verifying a genuine parent-child relationship will require covered websites to identify both the minor and the parent (or guardian), just as "verify[ing] . . . age[s]" will require covered websites to identify the account holder. *Id.* It is impossible to do any of this without significantly infringing the privacy rights of both minors and parents (or guardians). As just one example of the many difficulties in securing parental consent, the law does not account for situations in which a person's status as a parent (or guardian) is opaque or disputed.

d. New processes at sign up inevitably affect account holder growth, as cumbersome registration processes can dissuade people from signing up. Any decline in account holder sign-ups or current accounts will have a ripple effect on companies' advertising revenues, brand partnerships, and overall vitality. And of course, decline in usage means that fewer people avail themselves of the valuable speech available on the websites.

46. **Monitoring and censorship (Act § 6).** The Act's requirement for covered websites to "make commercially reasonable efforts to develop and implement a strategy to prevent or

mitigate the known minor's exposure to" certain prohibited categories of speech, Act § 6, will be difficult to comply with and will chill dissemination of speech.

a. Members enforce policies designed to address the same broad categories of harmful and objectionable speech that the Act seeks to regulate. But there is no guarantee that members' understanding and enforcement of their own policies will match Defendant's understanding of the Act's requirements. That is especially true because both private content moderation and the Act require subjective determinations for which there will be areas of disagreement. While members have the flexibility to take into account contextual considerations in individual cases, the Act is written in more absolute terms. The Act's plain terms seem to require websites to "prevent . . . exposure" not only to protected speech, but also to valuable works of art, literature, and pop culture that are suitable for at least some minors. Uncertainty about how broadly the Act extends—and how Defendant will interpret the Act—may spur members to engage in over-inclusive moderation that would block valuable content from all users.

b. My understanding is that not all covered websites have the ability to "age-gate," meaning that they are unable to separate the content available on adults' accounts from content available on minors' accounts. Therefore, for these websites, the restrictions on what content they may disseminate to minors will apply equally to adults. In other words, the Act would require those websites to block protected works of art, literature, and pop culture for adults as well, and to disseminate only a single, constrained range of speech to everyone.

c. The Act's two exceptions are little help. Specifically, the Act provides that "[n]othing in" the monitoring-and-censorship requirement "shall be construed to require a digital service provider to prevent or preclude": "(a) Any minor from deliberately and independently searching for, or specifically requesting, content; or (b) The digital service provider or individuals

on the digital service from providing resources for the prevention or mitigation of the [enumerated] harms . . . , including evidence-informed information and clinical resources." Act § 6(2). This will only create more compliance hurdles for covered websites, as they must figure out how to simultaneously "prevent exposure to" particular speech while also allowing minors to seek out that speech. Further complicating matters, the Act does not explain what it means for minors to "deliberately and independently search[]" for prohibited speech. Nor does the Act explain what kinds of results websites are allowed to provide in response to a search. Instead, the Act says only that websites are not required to prevent the search itself. Furthermore, members cannot be sure that Defendant will agree that particular authorities are appropriate "resources for the prevention or mitigation." In this way, the Act also implies a false dichotomy between content that promotes certain activities versus content that helps prevents or mitigate that activity. Communication is not that simple. Much content is neutral toward a topic—neither promoting nor preventing it. For fear of massive liability, many websites will likely engage in overinclusive content moderation.

47. NetChoice members would be irreparably harmed if they were required to comply with the Act's burdensome requirements. For one thing, the Act's extremely broad and vague proscriptions make perfect compliance unobtainable for most websites. Any website that even attempts to comply with the Act will incur substantial, unrecoverable costs in reconfiguring their service. All websites face significant uncertainty about their compliance with the Act given the Act's many ambiguities. NetChoice members' account holders and users (both minors and adults, current and prospective) will also suffer irreparable harms, as the Act will place burdens on their access to protected and valuable speech. Moreover, the Act directly requires websites to stop providing their current range of services and content to their current range of users and account holders, and it forces that same result indirectly through its threats of civil and criminal liability.

48. NetChoice member Nextdoor has barred minors from creating accounts on its service in two States where enforcement of similar laws was not enjoined prior to those laws' effective dates. Accordingly, Nextdoor's Member Agreement now states: "[I]ndividuals who are under the age of 18 are not permitted to create an account starting on September 1, 2024, if they are residents of the State of Texas, and starting on January 1, 2025, if they are residents of the State of Tennessee." Nextdoor, Member Agreement, https://perma.cc/5ZR6-KR2X.

* * *

49. If Defendant is permitted to enforce the Act against NetChoice's regulated members, NetChoice's mission to protect free speech and free enterprise online would be directly and substantially hurt—as would its affected member companies and their minor and adult account holders and users (both current and prospective).

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed on May 5, 2025, in Washington DC.

Bartlett Cleland

Appendix 10

No. 25-60348

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NETCHOICE, L.L.C.,
Plaintiff-Appellee,

v.

LYNN FITCH, IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF MISSISSIPPI,
Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
No. 1:24-cv-170-HSO-BWR

OPPOSED MOTION TO STAY THE DISTRICT COURT'S PRELIMINARY-INJUNCTION ORDER PENDING RESOLUTION OF APPEAL

LYNN FITCH
Attorney General
SCOTT G. STEWART
Solicitor General
JUSTIN L. MATHENY
ANTHONY M. SHULTS
Deputy Solicitors General
WILSON D. MINOR
Special Assistant Attorney General
MISSISSIPPI ATTORNEY
GENERAL'S OFFICE
P.O. Box 220
Jackson, MS 39205-0220
Telephone: (601) 359-3680
E-mail: scott.stewart@ago.ms.gov

Counsel for Defendant-Appellant

CERTIFICATE OF INTERESTED PERSONS

Under this Court's Rule 28.2.1, governmental parties need not furnish a certificate of interested persons.

s/ Scott G. Stewart
Scott G. Stewart
Counsel for Defendant-Appellant

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INTRODUCTION

This Court should stay, pending resolution of this appeal, the district court's injunction blocking enforcement of the Walker Montgomery Protecting Children Online Act, H.B. 1126 (2024) (App. A), Mississippi's targeted effort to address life-altering harms to children inflicted on social-media platforms. Op. (Dkt. 59) (App. B). The order defies this Court's prior decision *in this case* and is manifestly wrong—indeed, it squarely conflicts with the Supreme Court's decision in *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. — (U.S. June 27, 2025), which rejected a challenge to a law similarly protecting children online.

Enacted after a sextortion scheme on Instagram led a 16-year-old Mississippian to take his own life, the Act imposes modest duties on the interactive online platforms that are especially attractive to predators. The Act requires covered platforms to take "commercially reasonable" actions to verify a user's age, obtain parental consent for child users, and adopt a strategy to mitigate the harms to children inflicted on those platforms—sex trafficking, child pornography, targeted harassment, incitement to suicide, and more. The Act requires what any responsible covered platform would already do: make "commercially reasonable" efforts to protect minors—not perfect, state-of-the-art, or cost-prohibitive efforts, but efforts reflecting reasonable care.

NetChoice—a group representing billion-dollar tech giants—brought a facial challenge claiming that the Act's age-verification, parental-consent, and strategy provisions violate the First Amendment.

A year ago, the district court agreed. Dkt. 30. It ruled that the Act likely facially violates the First Amendment and issued a preliminary injunction barring its enforcement against NetChoice's members—relief that benefited 7 members regulated by the Act.

In *NetChoice, LLC v. Fitch*, 134 F.4th 799 (5th Cir. 2025), this Court vacated that injunction and remanded with directions to apply the demanding analysis that governs facial claims, including by applying two decisions setting forth a plaintiff's fact-heavy facial burden: *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), and *NetChoice, LLC v. Paxton*, 121 F.4th 494 (5th Cir. 2024). This Court ruled that because NetChoice seeks facial relief—relief blocking the Act in all applications—it faces a steep climb. First, it must establish "the law's scope" by showing "what activities and what actors are regulated, and whether the law regulates or prohibits those actors from conducting those activities." 134 F.4th at 807. Second, it must establish "which of the law['s] applications" violate the Constitution and show that they "substantially outweigh" constitutional applications. *Id.* at 807-08. So for the Act here, NetChoice must—based on a "factual" presentation—show the "'commercially reasonable efforts'" the law requires of *each* covered platform and thus "each" platform's "unique regulatory burden," *id.* at 808-09, establish for

each platform which burdens "intru[de] on" First Amendment rights, *Paxton*, 121 F.4th at 499, and show—in light of "every hypothetical application" of the Act—that invalid applications dominate, *id.* at 498. This "heavy burden" (*id.* at 497) is the "price" of challenging the Act "as a whole" (*Moody*, 603 U.S. at 744).

On remand, NetChoice refused to do what this Court directed. Rather than develop the factual record or make the application-by-application showing that this Court directed, NetChoice amended its complaint to add as-applied claims, filed a preliminary-injunction motion recycling its prior arguments and prior factual submissions, and urged the district court to grant the same relief as before.

The district court *ruled for NetChoice* and granted *the same facial relief it granted before*. It again credited NetChoice's First Amendment claim and blocked the Act *in every application* to *the same platforms* that benefited from the first injunction. Op. 11-35. The court did not perform the facial analysis—or demand the factual showing—that this Court ordered in *Fitch*. The court thought it could reinstate its prior relief because NetChoice had added as-applied claims. Op. 32.

This Court should stay the preliminary-injunction order.

The order defies this Court's mandate in this case. *Fitch* vacated an injunction that blocked the Act in all applications to NetChoice members and directed the district court to hold NetChoice to the burden that such facial relief requires. The district court then reinstated that injunction.

Although the district court said it was ruling on NetChoice's "as-applied" claims, the injunction is every bit the facial injunction that this Court vacated—and was issued without doing what this Court required. The mandate rule prohibits that. The State should not have to endure another year of appellate proceedings to get out from under the injunction that this Court already rejected.

Even putting aside the mandate rule, this Court will likely reject NetChoice's First Amendment claim—the only merits basis for the injunction. The Act here is constitutional under *Free Speech Coalition* (*FSC*), which rejected a First Amendment challenge to a Texas law requiring pornographic websites to verify visitors' ages. *FSC* ruled that States may require age verification to protect children from harm, that such a requirement does not directly regulate speech and so faces only intermediate scrutiny, and that Texas's law "readily satisfie[d]" that standard. *FSC* Op. 32. The Act here likewise regulates certain websites to protect children, does not directly regulate speech, and advances the State's interest in protecting children from predators while imposing at most "modest burden[s]" on speech (*id.* at 33)—requiring only "commercially reasonable" efforts to verify age, obtain parental consent, and mitigate harm. So the Act comports with the First Amendment. The district court ruled otherwise by failing to apply the "deferential" review that *FSC* mandates. *Id.* at 31.

The equities demand a stay. The injunction blocks a law that protects children from predators. The district court's equitable assessment rests on its flawed merits rulings. And in seeking relief, NetChoice urged the district court to defy this Court's mandate rather than do what this Court directed in *Fitch*. Equity should not condone that tactic. This Court should issue a stay.

BACKGROUND

Factual Background. The internet provides a forum for inflicting life-altering harms on children. Sophisticated online platforms host this conduct. To address these harms, Mississippi passed the Act, H.B. 1126. The Act took effect July 1, 2024. § 10.

The Act has a targeted scope. It "applies only to" online platforms that "[c]onnect[ ] users in a manner that allows users to socially interact with other users," "[a]llow[ ] a user to create a" profile that others may see, and "[a]llow[ ] a user to create or post content" that others can see. § 3(1)(a)-(c); *see* § 2(a)-(b). The Act thus regulates the interactive social-media platforms that let predators interact with children and feed those predators information about those children. The Act reaffirms this targeted aim by carving out many platforms, including those that mainly provide "access to news, sports, commerce, [or] online video games" and only "incidental[ly]" offer "interactive" ("chat") functions. § 3(2)(c).

The Act imposes on covered platforms three duties to address harms to children. *First*, platforms must register—and make

"commercially reasonable efforts to verify"—the age of those who create an account with the platform. § 4(1). *Second*, platforms must secure, through a "commercially reasonable" method, "express consent from a parent or guardian" before allowing a known minor to hold an account. § 4(2). The Act lists several "[a]cceptable methods" of consent, including filling out a form, making a phone call, or responding to an email, § 4(2)(a)-(e), and adds a catchall for "[a]ny other commercially reasonable method" "in light of available technology," § 4(2)(f). *Third*, platforms must make "commercially reasonable efforts" to adopt a strategy to address certain harms. § 6(1). A covered platform "shall make commercially reasonable efforts to develop and implement a strategy to prevent or mitigate [a] known minor's exposure to harmful material and other content that promotes or facilitates" listed "harms to minors." § 6(1). Those harms are: "self-harm, eating disorders, substance use disorders, and suicidal behaviors"; "[p]atterns of use that indicate or encourage substance abuse or use of illegal drugs"; "[s]talking, physical violence, online bullying, or harassment"; "[g]rooming, trafficking, child pornography, or other sexual exploitation or abuse"; "[i]ncitement of violence"; or "[a]ny other illegal activity." § 6(1)(a)-(f). Nothing in this strategy provision "require[s]" a platform "to prevent or preclude": (a) "[a]ny minor" from "searching for" or "requesting" content; or (b) the platform or those on it "from providing resources for the prevention or mitigation of the" listed harms. § 6(2).

The Act also limits covered platforms' use and collection of minors' sensitive information. § 5. The Act provides for enforcement by an affected minor's parents, § 7(2), and by the Attorney General, § 8. State law allows, for knowing and willful violations, civil monetary penalties and criminal liability. Miss. Code Ann. §§ 75-24-19, -20.

Procedural Background. In June 2024, NetChoice filed this lawsuit challenging sections 1-8 of the Act. It claims that the Act's age-verification, parental-consent, and strategy provisions violate the First Amendment, that the Act is unconstitutionally vague, and that the strategy provision is preempted. Complaint ¶¶ 60-156 (Dkt. 1). NetChoice raised only "facial" claims. *Id.* ¶ 58. It alleged that, "[b]ased on the Act's definitions," the Act covers and regulates the following NetChoice members: Google (which operates YouTube), Meta (which operates Facebook and Instagram), X (formerly Twitter), Snap Inc. (which operates Snapchat), Pinterest, Nextdoor, and Dreamwidth. *Id.* ¶ 13. NetChoice moved for a preliminary injunction. Dkts. 3, 4. It submitted declarations from its then-general counsel and officials with YouTube, Nextdoor, and Dreamwidth describing covered members' practices for protecting minors. Szabo Dec. ¶¶ 11-19 (Dkt. 3-2) (addressing 7 members); Veitch Dec. ¶¶ 16-28 (Dkt. 3-3) (YouTube); Pai Dec. ¶¶ 5-19 (Dkt. 3-4) (Nextdoor); Paolucci Dec. ¶¶ 16-21 (Dkt. 3-5) (Dreamwidth). The declarations claim that complying with the Act would be hard, costly, and damaging. Szabo Dec. ¶¶ 28-33; Veitch Dec. ¶¶ 29-

42; Pai Dec. ¶¶ 20-33; Paolucci Dec. ¶¶ 9-15, 22-26, 33-37. One member (Dreamwidth) claims that the costs of complying with the Act may force it to shut down. Paolucci Dec. ¶¶ 34, 35, 37.

On July 1, 2024, the district court granted a preliminary injunction barring the Act's enforcement against "NetChoice ... and its members." Dkt. 30 at 39-40 (App. C). The injunction thus benefited the member platforms listed above. The court held that NetChoice will likely win on its facial First Amendment and facial vagueness claims. Dkt. 30 at 16-35. The court did not reach the preemption claim. Dkt. 30 at 38 n.7. Although the court ruled that the Act is likely facially unconstitutional, it did not assess the challenged provisions on an application-by-application basis or compare lawful to unlawful applications.

The same day, the Supreme Court decided *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024). *Moody* vacated two lower-court decisions (including a Fifth Circuit decision in *NetChoice, LLC v. Paxton*) because, in addressing facial claims against social-media laws, the lower courts failed to "perform[ ]" the required "facial analysis." *Id.* at 726. *Moody* emphasized that facial claims are "hard to win" and that courts must undertake a rigorous "inquiry" to assess whether a plaintiff has "carr[ied]" the demanding "burden" that governs those claims. *Id.* at 723, 718, 744. First, a court must "assess the state law['s] scope" by "determin[ing]" the law's "full set of applications." *Id.* at 724, 718. Second, the court must "decide which of the law['s] applications" (if any) "violate"

the Constitution and "compare" the law's "constitutionally impermissible and permissible" applications. *Id.* at 725, 726. A facial First Amendment claim can succeed "only if the law's unconstitutional applications substantially outweigh its constitutional ones." *Id.* at 724. A plaintiff must make the required showings for each challenged provision. *See id.* at 724-26, 727 n.3. And a court must hold the plaintiff to this burden rather than "disregard the requisite inquiry." *Id.* at 744.

The State appealed from the district court's order. After the appeal was briefed, this Court decided *NetChoice, LLC v. Paxton*, 121 F.4th 494 (5th Cir. 2024). In *Paxton*, as here, a district court granted NetChoice facial First Amendment injunctive relief against a state law regulating social-media platforms. After *Moody*, this Court ruled that NetChoice had not met its "heavy burden" "to develop a factual record" to support its facial claim and remanded for "thorough discovery." *Id.* at 497, 500. This Court explained that in a "First Amendment facial challenge" a district court must "determine every hypothetical application of the challenged law" and faulted NetChoice for not developing a factual record to allow that determination. *Id.* at 498; *see id.* at 498-99. Then, for "every hypothetical application," the district court must determine—based on "factual development" by NetChoice—"whether there is an intrusion on" First Amendment rights. *Id.* at 498, 499; *see id.* at 499-500.

On April 17, 2025, this Court vacated the preliminary-injunction order in this case and remanded for the district court to perform the

analysis required by *Moody* and *Paxton*. *NetChoice, LLC v. Fitch*, 134 F.4th 799, 807-09 (5th Cir. 2025). This Court ruled that the district court did "not determin[e] the full scope of actors regulated by the Act and the activities it regulates," as *Moody* requires. *Id.* at 809. On actors: The district court "did not determine" whether the Act applies to (for example) "Uber, Google Maps, DraftKings, Microsoft Teams, Reddit, Pinterest, or X," "among many other[ ]" actors. *Id.* at 808, 809. On activities: The district court "did not determine the 'commercially reasonable efforts,' as used in the Act, or the Act's requirements for each [covered platform], requirements likely to be different with each [covered platform] facing a unique regulatory burden." *Ibid.* This activities inquiry, this Court ruled, requires a factual assessment of each covered platform for each provision that NetChoice challenges. "Some" platforms "may not need to devote additional resources to prevent known minors from holding an account without express parental consent, verify the age of anyone seeking to create an account, or implement a strategy to mitigate minors' exposure to certain content." *Ibid.* "For other" platforms, "these requirements may reach beyond their resources." *Ibid.* But "[w]ithout a factual analysis determining the commercially reasonable effort demanded of each individual [covered platform]," the district court "could not 'decide which of the law['s] applications violate the First Amendment, and ... measure them against the rest'" or "determine whether 'the law's unconstitutional applications substantially outweigh its constitutional ones.'" *Ibid.*

(quoting *Moody*, 603 U.S. at 725, then *Paxton*, 121 F.4th at 498). Because the district court "did not" "determine" as a "factual" matter "to whom the Act applies" or "the activities it regulates" and "then weigh violative applications of the Act against non-violative applications," *Fitch* concluded, the district court's facial ruling "cannot now stand." *Ibid.*

On remand, NetChoice filed an amended complaint that brings the same claims as before, Amended Complaint ¶¶ 93-215 (Dkt. 48), and adds allegations that "the Act is unconstitutional as applied to NetChoice members and their services regulated by the Act," *id.* ¶ 3; *see id.* ¶¶ 86-87, 129. NetChoice identifies the same covered members as in the original complaint except it has added Reddit (a new member) and lists YouTube rather than Google as a member. *Id.* ¶ 15. NetChoice alleges that at "minimum" "the Act is invalid to the extent it regulates 'social media' websites, including as applied to Plaintiff's members' regulated services identified in ¶ 14." *Id.* ¶ 87. The amended complaint does not—in paragraph 14 or anywhere else—describe those services.

NetChoice again moved for an injunction. Mot. (Dkt. 49); Mem. (Dkt. 50). It relied on the three member declarations filed with its first injunction motion, Mot. 3, and a declaration from its current general counsel, Bartlett Cleland, Dkt. 49-1. The 26.5-page Cleland declaration largely repeats the 23.5-page declaration by Carl Szabo (NetChoice's previous general counsel) filed with the first injunction motion. The Cleland declaration adds bullet points describing how "users employ ...

covered websites to communicate" (Cleland Dec. ¶ 7), allegations about how Reddit protects minors on its platform (*see id.* ¶¶ 13-20), and more allegations on why the Act covers some members and not others (*compare id.* ¶¶ 28-41 *with* Szabo Dec. ¶¶ 25-27).

Despite *Fitch*, nothing in NetChoice's new complaint, new briefing, or declarations (new or old) says what any platform must in fact do under each challenged provision or what would constitute "commercially reasonable" actions to verify age, obtain parental consent, or adopt a harm-mitigation strategy for any platform. §§ 4(1), 4(2), 6.

On June 18, the district court granted a preliminary injunction barring the Act's enforcement—in all applications—against YouTube, Meta, X, Snap, Pinterest, Nextdoor, Dreamwidth, and Reddit. Op. 35. *First*, the court held that NetChoice will likely win on its "as-applied" First Amendment claim. Op. 30. The court ruled that the Act is a content-based regulation of speech that likely fails strict scrutiny (Op. 14-27) and also likely fails intermediate scrutiny (Op. 27-30). The court said that because on remand NetChoice "add[ed]" an "as-applied challenge," the court did not need "to address [NetChoice's] facial challenge under the framework announced in *Moody*." Op. 32. The court did not reach NetChoice's other claims. *Second*, the court ruled that the equities favor relief. The court emphasized its merits rulings and compliance costs that, according to Dreamwidth, "may threaten the very existence of its business." Op. 31; *see* Op. 30-32.

On June 25, the district court denied the State's motion (Dkt. 61) to stay the injunction pending this appeal. Dkt. 65 (App. D).

ARGUMENT

This Court should stay the preliminary-injunction order pending appeal. The State will likely succeed on appeal, it will be irreparably injured without a stay, a stay will not unduly harm others, and the public interest supports a stay. *Ohio v. EPA*, 603 U.S. 279, 291 (2024).

I. This Court Is Likely To Reject The District Court's Injunction Blocking Mississippi's Act Regulating Social-Media Platforms.

This Court is likely to reject the preliminary-injunction order.

A. The Injunction Defies This Court's Mandate In The State's Successful First Appeal In This Case.

"[A] district court must comply with a mandate issued by an appellate court." *M.D. v. Abbott*, 977 F.3d 479, 482 (5th Cir. 2020). The preliminary-injunction order violates that rule.

In *Fitch*, this Court vacated an injunction blocking the Act's enforcement in all applications to NetChoice members and directed the district court to hold NetChoice to the burden that such facial relief requires. 134 F.4th at 807-09. *Fitch* gave the district court clear instructions on how to assess NetChoice's request for facial relief and directed the court to apply *Moody* and *Paxton*. *Ibid.*

On remand, NetChoice refused to make a "factual" showing of what "commercially reasonable efforts" the Act requires of *any member* on age

verification, parental consent, or harm mitigation and whether requiring those efforts would "violate the First Amendment." 134 F.4th at 809. NetChoice instead recycled its prior factual submissions and arguments.

Yet the district court *reinstated* the injunction that *Fitch* vacated: it blocked the Act in all applications to covered NetChoice members. Op. 34-35. The court (like NetChoice) ignored most of *Fitch* (*see* Op. 7, 10, 32), expressly declined to apply *Moody* (Op. 32-33), and cited *Paxton* once without applying it (Op. 7). Although the court said that it was ruling on NetChoice's "as-applied" claims rather than its facial claims, Op. 32, the injunction is every bit the facial injunction that *Fitch* vacated: it again bars the Act's enforcement *in any application* to *any* covered NetChoice member.

Violations of the mandate rule come no clearer than that. A district court may not reinstate a decision vacated by this Court without heeding this Court's "specific instruction[s]." *M.D.*, 977 F.3d at 482. In issuing the first injunction, the district court did not perform the "inquiry" that facial relief requires. *Moody*, 603 U.S. at 744. Doing so a second time—after *Moody*, *Paxton*, and *Fitch* made the inquiry triply clear—demands swift action. The State should not have to endure another year of appellate proceedings to get out from under an injunction that this Court already rejected. A stay is warranted on this ground alone.

B. The District Court Erred In Ruling That Any Part Of The Act Likely Violates The First Amendment.

This Court will likely hold that the Act does not violate the First Amendment. Among other problems, the injunction cannot stand under *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. — (U.S. June 27, 2025).

1. The Act comports with the First Amendment.

a. Under *FSC*, the Act is subject at most to intermediate scrutiny. The Act is "an exercise of [Mississippi's] traditional power" to protect minors from predators. *FSC* Op. 13. "To the extent that it burdens" anyone's right to access or engage in speech, it has "only an incidental effect on protected speech." *Ibid.* So it is "subject to" no more than "intermediate scrutiny." *Ibid.*

To start, States have power to protect minors from predatory harm—including by adopting age-verification, parental-content, and harm-mitigation requirements. *Cf. FSC* Op. 13-18. States may (for example) bar people from sexually abusing, selling drugs to, sextorting, or harassing minors. States also may require businesses to pay for or otherwise mitigate the harms they impose on minors (and others). These powers to protect minors "necessarily include[ ] the power" "to employ the ordinary and appropriate means of" of achieving these ends. *Id.* at 13, 14. Requiring age verification and parental consent are common ways to protect minors from harms. *See*, *e.g.*, *id.* at 14-15; Ala. Code § 22-17A-2(a) (requiring "written" parental consent before tattooing a minor); Haw.

Code R. 11-17-7(b) (same); Vt. Stat. Ann. tit. 26, § 4102(c) (same). Requiring businesses to mitigate the harms they cause (to minors or others) is also common—States do this through tort law, property regulations, and more. And these are the requirements—age verification, parental consent, harm mitigation—that the Act imposes. §§ 4(1), 4(2), 6. So the Act is within the State's power.

Next, the Act "do[es] not directly regulate ... protected speech," so it is subject at most to intermediate scrutiny. *FSC* Op. 18; *see id.* at 18-19. "On its face," the Act regulates predatory conduct that occurs online. *Id.* at 18. To address that conduct, the Act requires covered platforms to make "commercially reasonable" efforts to verify age, obtain parental consent, and adopt a harm-mitigation strategy. §§ 4(1), 4(2), 6. And the Act "can easily be justified without reference to the protected content" of any "regulated speech." *FSC* Op. 18 (cleaned up). The Act's "apparent purpose" (*ibid.*) is to protect minors from predatory harms that occur on the interactive social-media platforms that let predators interact with children and feed those predators information about those children. NetChoice claims that the age-verification and parental-consent requirements burden a "right to access speech" (*ibid.*) on covered platforms. *See* Mem. 7-10. Even if that were true, there is "no First Amendment right to avoid" age verification or parental consent. *FSC* Op. 18. NetChoice also claims that the strategy provision intrudes on "expressive choices" (*Moody v. NetChoice, LLC*, 603 U.S. 707, 740 (2024))

by requiring covered platforms to block or alter content. *See* Mem. 10-13, 15. That is wrong. That provision requires platforms to make "commercially reasonable efforts" to adopt a "strategy" to address certain harms—by "prevent[ing] *or* mitigat[ing]" exposure to those harms. § 6 (emphasis added). A platform can satisfy that provision by making efforts to mitigate the damage to minors from listed harms. *Mitigation* can thus occur *after* a user is harmed. The provision thus does not regulate speech, restrict platforms' content choices, or require monitoring, blocking, altering, or removing any content. And there is "no First Amendment right" for a business to "avoid" taking steps to address the harms it imposes on minors. *FSC* Op. 18. For these reasons, "[a]ny burden" the Act imposes on speech is "only incidental to" the Act's "regulation of activity that is not protected by the First Amendment"—sexual abuse, sextortion, trafficking, and more. *Ibid.* "Intermediate scrutiny" (at most) is thus "the appropriate standard." *Ibid.*

b. The Act "readily satisfies" intermediate scrutiny. *FSC* Op. 32.

The Act "undoubtedly advances an important governmental interest." *FSC* Op. 32. As the district court "accept[ed]" (Op. 21, 28), States have "a compelling interest in protecting the physical and psychological well-being of minors." *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115, 126 (1989). The Act "furthers that interest" (*FSC* Op. 32): the age-verification provision puts a guardrail in place before minors are exposed to predators, the parental-consent provision

provides an additional guardrail by promoting parental oversight and involvement, and the strategy provision promotes practices that may avert or mitigate a range of tragic harms. §§ 4(1), 4(2), 6.

The Act is also "sufficiently tailored" to the State's interest. *FSC* Op. 32. Requiring age verification, parental consent, and harm mitigation are common ways to protect minors or address harms inflicted on them. The State's aims "would be achieved less effectively" without these regulations (*ibid.*), which involve parents in minors' consequential activities and ameliorate life-altering dangers or damage to minors. And "it cannot be said that a substantial portion of" any "burden" the Act imposes "fails to advance" the State's goals. *Id.* at 34 (cleaned up). The Act merely "adapts" "traditional" methods of protecting minors "to the digital age." *Id.* at 33. *FSC* just ruled that requiring "established [age-]verification methods already in use" "does not impose excessive burdens." *Id.* at 33, 34 n.14. The parental-consent provision also does not impose excessive burdens. The Act *deems* parental consent to be given by any of several easy means—a phone call, an email response, or any other "commercially reasonable method"—without more. § 4(2). There is no need to verify the parental relationship. Op. 26 ("none of the options" "require[s] verifying" that relationship). And adopting a harm-mitigation strategy is not excessively burdensome either. The Act requires only "commercially reasonable"—not cost-prohibitive—efforts to adopt a harm-mitigation "strategy." § 6. NetChoice says that its members have

policies addressing online harms. Mem. 3-4; Cleland Dec. ¶¶ 12-20. All these "modest burden[s]" are sufficiently tied to the State's interests. *FSC* Op. 33. The Act does not abridge "the freedom of speech." U.S. Const. amend. I.

2. The district court erred in ruling that the Act likely violates the First Amendment. Op. 14-30.

The court ruled that the Act likely fails strict scrutiny. Op. 14-27. But the Act is not a "direct targeting of fully protected speech" or a flat "ban" on speech, so strict scrutiny does not apply. *FSC* Op. 20, 23; *see id.* at 19-27. Again, laws—like the Act—that do not directly regulate speech and at most "burden" it face only intermediate scrutiny. *Id.* at 21.

The court also claimed that the Act likely fails intermediate scrutiny, but its 2-paragraph analysis (Op. 28-29) is deeply flawed. The court said that the Act uses a "method" for protecting minors that "does not appear ... to be unrelated to the suppression of speech." Op. 28. But as *FSC* made clear, regulating access to websites to protect minors from harm does not target or seek to suppress speech. *FSC* Op. 18. Requiring age verification, parental consent, and mitigation of concrete harms "does not directly regulate ... protect speech" or aim at "protected" speech: it aims at protecting minors. *Ibid.* The court also said that the Act "burdens substantially more speech than is necessary for the State to accomplish its goals." Op. 28. But age verification and parental consent are "modest burden[s]" (*FSC* Op. 33) that are not "excessive" (*id.* at 34 n.14) to the

critical ends of protecting minors from the predatory conduct that proliferates online. *Contra* Op. 28-29. The court claimed that the strategy provision requires platforms to "prevent[ ] ... exposure" to protected speech. Op. 29. But again, all that provision requires is a "strategy" to "mitigate" listed harms. § 6. Last, the court pointed to "uncertainty" about the Act's breadth that could cause platforms to take an over-inclusive approach to blocking content. Op. 29. But that view rests on the erroneous NetChoice-peddled claim that the Act requires covered platforms to block content.

3. Last: The district court blocked sections 1-8 of the Act. Op. 35. The court—like NetChoice—gave no basis for blocking most of those sections. Section 1 states the Act's title, section 2 defines terms, and section 3 defines coverage: none is a substantive or enforcement provision and none plausibly violates anyone's rights. Section 5 limits platforms' use and collection of minors' sensitive information. NetChoice said below that the coverage definition renders section 5 "content-based," Mem. 16, but it developed no argument that section 5 regulates speech or infringes any right. Section 7 provides a limited private right of action. NetChoice has not sued anyone who could bring such an action, so there is no basis to block that provision. The relief ordered against these provisions underscores the flawed approach pervading the injunction. This fortifies the need for a stay—at least as to these provisions.

II. The Equities Favor Staying The Injunction So That The Act Can Protect Minors From Harms That Proliferate Online.

The equities strongly support a stay. Enjoining enforcement of a "duly enacted [state law] clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018). The harm is especially severe because the Act serves the powerful public interest in protecting children. *Sable Communications*, 492 U.S. at 126. The district court "accept[ed]" that "safeguarding the physical and psychological wellbeing of minors online is a compelling interest." Op. 21. And "[s]ocial-media platforms" create "unprecedented dangers," *Moody*, 603 U.S. at 716—particularly for minors. The injunction thwarts the State's efforts to protect minors from those dangers and undermines the public interest.

On the equities, the district court relied on its flawed merits ruling. Op. 30, 31. On irreparable harm, the court also relied on compliance costs. Op. 30-31. Dreamwidth claims that the costs of complying with the Act "threaten[ ] [its] ability to continue operating." Paolucci Dec. ¶ 35. But the Act requires only "commercially reasonable" efforts—not cost-prohibitive ones—based on the particular platform's resources. *NetChoice, LLC v. Fitch*, 134 F.4th 799, 809 (5th Cir. 2025). NetChoice's other declarations are shot through with similar errors and do not support the district court's equitable assessment. As examples, the declarations baselessly suggest that the age-verification and parental-consent provisions will require "comprehensive and foolproof systems"

and "cumbersome registration processes" (Cleland Dec. ¶¶ 45a, 45d), that the age-verification provision will require using facial recognition and demanding government IDs (Veitch Dec. ¶ 32), that the parental-consent provision will require expertise in family law (Paolucci Dec. ¶ 35), and that the strategy provision requires blocking content (Cleland Dec. ¶¶ 46a, 46b). All that is wrong. The Act requires only the reasonable efforts that any responsible platform would already make.

Notably, on remand NetChoice did not even try to do what *Fitch* directed. It instead urged the district court to defy *Fitch*. Equity should not condone that defiance. NetChoice members should not enjoy, for one day more, an injunction insulating them from taking reasonable steps to protect minors from predators.

CONCLUSION

This Court should stay the district court's preliminary-injunction order pending resolution of this appeal.

Respectfully submitted,

LYNN FITCH
Attorney General

s/ Scott G. Stewart

SCOTT G. STEWART
Solicitor General
JUSTIN L. MATHENY
ANTHONY M. SHULTS
Deputy Solicitors General
WILSON D. MINOR
Special Assistant Attorney General
MISSISSIPPI ATTORNEY
GENERAL'S OFFICE
P.O. Box 220
Jackson, MS 39205-0220
Telephone: (601) 359-3680
E-mail: scott.stewart@ago.ms.gov

Counsel for Defendant-Appellant

July 2, 2025

CERTIFICATE OF CONFERENCE

On June 25, 2025, counsel for defendant-appellant contacted counsel for plaintiff-appellee and asked for plaintiff's position on this motion and whether plaintiff plans to file a response. Plaintiff's counsel advised that plaintiff opposes this motion and will file a response.

Dated: July 2, 2025

s/ Scott G. Stewart
Scott G. Stewart
Counsel for Defendant-Appellant

CERTIFICATE OF SERVICE

I, Scott G. Stewart, hereby certify that this motion has been filed with the Clerk of Court using the Court's electronic filing system, which sent notification of such filing to all counsel of record.

Dated: July 2, 2025

s/ Scott G. Stewart
Scott G. Stewart
Counsel for Defendant-Appellant

CERTIFICATE OF COMPLIANCE

This motion complies with the word limitations of Fed. R. App. P. 27(d)(2)(A) because it contains 5154 words, excluding parts exempted by Fed. R. App. P. 32. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because its text has been prepared in proportionally spaced typeface, including serifs, using Microsoft Word 2016, in Century Schoolbook 14-point font.

Dated: July 2, 2025

s/ Scott G. Stewart
Scott G. Stewart
Counsel for Defendant-Appellant