IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

NETCHOICE, *Plaintiff*, v. CITY OF CHICAGO; CHICAGO DEPARTMENT OF FINANCE; MICHAEL BELSKY, in his official capacity as City Comptroller; ANNETTE GUZMAN, in her official capacity as Budget Director; NICK LUCIUS, in his official capacity as Chief Information Officer, *Defendants*.	)	Case No. _____ Hon. _____

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

1. Since the beginning of our constitutional republic, courts have recognized that "the power to tax involves the power to destroy." *McCulloch v. Maryland*, 17 U.S. 316, 431 (1819). In recognition of its potentially destructive power, taxation is subject to stringent requirements, deriving from both federal and state law.

2. The Chicago Social Media Amusement Tax, Chi. Mun. Code, §§ 4-156-1000 *et seq.* (the "Social Media Amusement Tax" or "Tax"), exceeds those limitations in multiple ways. The Tax is preempted by the federal Internet Tax Freedom Act[1] ("ITFA"). It violates the Illinois Constitution because it is an unauthorized occupation tax. And the Tax violates the First Amendment and the Commerce Clause of the U.S. Constitution.

3. *First*, ITFA preempts the Tax. ITFA is a federal statute that prohibits state and local governments from imposing "discriminatory taxes on electronic commerce." ITFA § 1101(a)(2).

[1] Pub. L. No. 105-277, §§ 1000 *et seq.*, 112 Stat. 2681 (1998) (codified at 47 U.S.C. § 151 note).

A tax on an online service violates ITFA unless it is also generally imposed and legally collectible on transactions involving similar offline services. Because the Tax is imposed *only* on online social media businesses (and no other businesses), it is expressly preempted by federal law.

4. *Second*, the Tax violates Article VII, Section 6 of the Illinois Constitution because it is imposed upon an occupation—the business of operating a social media website—but is not authorized by the General Assembly.

5. *Third*, a "discriminatory tax on the press burdens rights protected by the First Amendment." *Ark. Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 227 (1987). Selective taxation of the media—like the Tax here—poses a "particular danger of abuse" and is presumptively unconstitutional. *Id.* at 228; *see, e.g.*, *Minneapolis Star & Trib. Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585-93 (1983); *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250-51 (1936).

6. *Fourth*, the Tax violates the Commerce Clause of the U.S. Constitution because the Tax is not fairly apportioned. If the Tax were to be duplicated by every State, multiple taxation would result and disadvantage interstate compared with intrastate commerce. *See Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 287 (1977).

7. Accordingly, for any of these independent reasons, Chicago's Social Media Amusement Tax should be declared invalid, and its collection should be enjoined because it cannot be reconciled with federal or state law.

PARTIES & STANDING

8. Plaintiff NetChoice is a District of Columbia nonprofit trade association whose members engage in electronic commerce. NetChoice's mission is to promote online commerce and speech and to increase consumer access and options via the Internet, while minimizing burdens

that could prevent businesses from making the Internet more accessible and useful. NetChoice's members are listed at NetChoice, About Us, https://perma.cc/5QXR-E9H7.

9. NetChoice has associational standing to challenge the Tax 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) NetChoice's members' individual participation is unnecessary in this purely legal challenge. *See Illinois Rd. & Transp. Builders Ass'n v. Cnty. of Cook*, 2022 IL 127126, ¶ 14 (citing federal standard from *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)); *NetChoice, L.L.C. v. Fitch*, 134 F.4th 799, 804-05 (5th Cir. 2025) (applying federal standard); *NetChoice v. Jones*, No. 1:25-cv-2067, 2026 WL 561099, at *4-5 (E.D. Va. Feb. 27, 2026); *NetChoice v. Murrill*, No. 3:25-cv-00231, 2025 WL 3634112, at *15-20 (M.D. La. Dec. 15, 2025) (same); *NetChoice v. Carr*, 789 F. Supp. 3d 1200, 1213-15 (N.D. Ga. 2025) (same); *NetChoice, LLC v. Yost*, 778 F. Supp. 3d 923, 939-40 (S.D. Ohio 2025) (same); *Comput. & Commc'ns Indus. Ass'n v. Paxton*, 747 F. Supp. 3d 1011, 1029-31 (W.D. Tex. 2024) (same); *NetChoice, LLC v. Griffin*, No. 5:23-cv-05105, 2023 WL 5660155, at *10 (W.D. Ark. Aug. 31, 2023) ("*Griffin I*") (same).

10. Based on the Act's definitions, § 4-156-1010, some NetChoice members are directly subject to the Tax as "social media businesses" and could face serious legal consequences if they violate the Tax. *See* § 4-156-1020(b).[2]

11. On information and belief, NetChoice members subject to the Tax have paid the first monthly Tax amount under protest, pursuant to § 3-4-100(D).

[2] Unless otherwise noted, statutory citations are to the Chicago Municipal Code, where the Tax is codified.

12. Defendant City of Chicago is an Illinois municipal corporation with offices located at City Hall, 121 N. LaSalle Street, Chicago, Illinois 60602. Defendant City of Chicago is a "home rule unit" within the meaning of the Illinois Constitution and state statutes. *See* Ill. Const. 1970, art. VII, § 6(a) ("[A]ny municipality which has a population of more than 25,000 [is a] home rule unit[ ]."); *City of Chicago v. StubHub, Inc.*, 2011 IL 111127, ¶ 26 ("[T]he City [of Chicago] has home rule authority to tax (*see* Ill. Const. 1970, art. VII, § 6(a))[.]"). Through its various offices (including the Department of Finance and the Department of Business Affairs and Consumer Protection), employees, agents and/or elected officials, the City of Chicago will administer and collect the Tax under the Chicago Municipal Code, §§ 4-156-1000 *et seq.*

13. Defendant Chicago Department of Finance is the division of the City of Chicago that is responsible for revenue collection. Taxes paid pursuant to the Tax are due and payable to the Department of Finance. § 4-156-1030(a).

14. Defendant Michael Belsky is sued in his official capacity as the Comptroller of the City of Chicago, which is the office at the head of the Chicago Department of Finance. Comptroller Belsky is empowered to collect the Tax. § 4-156-1050.

15. Defendant Annette Guzman is sued in her official capacity as the Budget Director of the City of Chicago. Budget Director Guzman leads the Office of Budget and Management. The Budget Director is tasked alongside the Comptroller with "track[ing] the collection and spending of all proceeds, including penalties, resulting from the imposition" of the Tax. § 4-156-1050.

16. Defendant Nick Lucius is sued in his official capacity as the Chief Information Officer of the City of Chicago. Chief Information Officer Lucius leads the Department of Technology and Innovation. The Chief Information Officer is tasked alongside the Comptroller with "promulgat[ing] rules necessary or appropriate to implement" the Tax. § 4-156-1060.

JURISDICTION

17. This Court has subject matter jurisdiction over this matter under 735 ILCS 5/2-701, and under Article VI, § 9 of the Illinois Constitution because Plaintiff seeks a declaratory judgment that the Tax violates ITFA, the Illinois Constitution, and the United States Constitution.

18. This Court has personal jurisdiction over Defendants because: (i) the City of Chicago is an Illinois entity with its principal place of business in Illinois; (ii) the Chicago Department of Finance is a subdivision of the City of Chicago; (iii) the Comptroller resides in Illinois; (iv) the Budget Director resides in Illinois; (v) the Chief Information Officer resides in Illinois; and (vi) the conduct directed and enforced by the City, the Department of Finance, the Comptroller, the Budget Director, and the Chief Information Officer, against Plaintiff and certain of its members occurred, is occurring, and will occur in Illinois. 735 ILCS 5/2-209(a)(1), -(b)(2), -(b)(4), -(c).

19. Venue is proper in Cook County because: (i) Defendants have their principal office(s), or conduct business in Cook County, Illinois, 735 ILCS 5/2-101(1), 2-102(a), 2-103(a); and (ii) transactions that gave rise to Plaintiff's cause of action against Defendants, the adoption of the Ordinance Amendments at issue and the impending application thereof, occurred and are occurring in Cook County, Illinois, 735 ILCS 5/2-101(2).

CHICAGO SOCIAL MEDIA AMUSEMENT TAX

20. At the very end of 2025, the Chicago City Council passed SO2025-0021719, including the Social Media Amusement Tax, Chi. Mun. Code, §§ 4-156-1000 *et seq.* After a previous version of the Tax was introduced and not adopted (*see* O2025-0021094), the Tax was introduced again on December 10, 2025, and passed the Chicago City Council nine days later by a 30-18 vote. Later that month, after Mayor Johnson chose to not veto the Tax, it became law without his signature.

21. The Tax took effect on January 1, 2026. In-scope social media businesses were required to make their first Tax payment by February 17, 2026.

22. **Content-Based Definition of Entities Subject to the Tax. §§ 4-156-1010, 4-156-1020(b), 4-156-1040(a).** The Tax is imposed on "social media businesses," defined as any "for-profit entity that: (a) provides individuals with access to social media and (b) collects, maintains, uses, processes, sells, or shares consumer data, other than consumer contact information, in support of the entity's business activities." §§ 4-156-1010, 4-156-1020(b).

23. "Social media" under the Tax means "websites, applications, products, and internet platforms *that allow[] consumers to view, share, and otherwise engage with images, videos, and audio presented* in types and formats including, but not limited to, performances, promotions, memes, augmented reality, artificial intelligence, and live streams." *Id.* (emphasis added).

24. As an initial matter, no offline businesses are subject to the Tax.

25. The Tax excludes certain social media businesses, because the Tax is imposed on only those social media businesses that "collect consumer data on more than 100,000 Chicago consumers in a calendar year." § 4-156-1020(b). That number is based on how many Chicago social media users a company "collects consumer data" from each month. *Id.*

26. The Tax also excludes websites based on their content, such as "any bona fide *news* website, application, or platform." § 4-156-1010 (emphasis added); § 4-156-1040(d) (the Tax does not "apply to or affect the rights of any news-gathering organization");

27. The Tax does not provide any criteria—neutral or otherwise—to distinguish "bona fide news" websites from other news websites. *E.g.*, *Yost*, 778 F. Supp. 3d at 957 (holding unconstitutionally vague a "troubling" and "eyebrow-raising [coverage] exception for 'established' and 'widely recognized' media outlets" in "social media" law).

28. Because the Tax applies only to "social media business[es]," it necessarily singles out websites that engage in expressive activity and facilitate a "staggering" amount of fully protected speech across "billions of posts." *See Moody v. NetChoice, LLC*, 603 U.S. 707, 734 (2024).

29. Covered websites "engage[] in expression" through their "display" and "compiling and curating" of First Amendment-protected content (text, audio, images, and video) "created by others." *Id.* at 728, 731, 740.[3] In this way, social media websites can be "thought of as publishers of opinion work—a newspaper limited to 'Letters to the Editor,' or a publisher of a series of essays by different authors." *Yost*, 778 F. Supp. 3d at 948; *see Moody*, 603 U.S. at 731 (analogizing social media services to newspapers and parades).

30. NetChoice's members' social media services—like other covered websites—are delivered to consumers throughout the United States, including Chicago.

31. "Social media" services as defined by the Tax are exclusively delivered over the Internet.

32. **Tax Imposition: 50-Cent-Per-User Monthly Tax. § 4-156-1020.** The Tax imposes a 50 cent tax *each month* for *every Chicago consumer* of a social media business over 100,000 from whom such business collects consumer data. § 4-156-1020(b).

33. The Tax provides no credit for taxes paid to other jurisdictions, nor is it apportioned.

34. Although the Tax purports to "have no retroactive application," it treats "the ongoing retention" of consumer data collected or acquired prior to the effective date of the Act as

[3] For brevity, this Complaint uses the terms "covered website" or "social media website" to include regulated "websites, applications, products, and internet platforms" under the Tax. § 4-156-1010.

"substantially identical to consumer data collected or acquired after the effective date." § 4-156-1040(e).

35. Chicago states that the Tax is intended to tax "the activity of social media amusement." *See* §§ 4-156-1000, 4-156-1020(a).

36. However, the Tax is not calculated based on consumers' use of social media. Rather, it purports to tax social media amusement activity by measuring "the means by which such media content engagement is most commonly monetized, through the collection and use of consumer data by a social media business in support of the entity's commercial purposes." § 4-156-1020(a). Yet myriad other online services collect data from their users—and those services are left untaxed. Those services include news websites, shopping websites, and nearly every other kind of online service.

37. Several of NetChoice's members' services are provided to more than 100,000 Chicago consumers as the Tax defines "Chicago consumer."

38. **Chicago Consumers. §§ 4-156-1010, 4-156-1020(c)(1).** A "Chicago consumer" is defined as "a Chicago resident who uses social media in the City accessed through an account registered with a social media business and whose consumer data is collected by the social media business, regardless of whether the individual is charged for establishing the account or accessing the media. § 4-156-1010.

39. A "Chicago resident," in turn, means any individual in Chicago, except for temporary or transitory purposes, during the calendar year, or any individual domiciled in Chicago. *Id.*

40. If a consumer's information is "on record with or available to" a social media business and indicates a Chicago home address, a Chicago mailing address, or a Chicago IP address, the consumer is presumed to be a "Chicago consumer." § 4-156-1020(c)(1).

41. The social media business bears the burden of proving a negative—that a consumer is *not* a Chicago consumer. *Id.* But most social media businesses do not obtain their users' mailing addresses. They may obtain IP addresses or locations via wireless signals that indicate a phone or a computer's location while a covered website is being used, but social media businesses have no way of knowing if that user is a resident of Chicago. Moreover, IP addresses are ill-suited to determining where precisely a user is located—or whether the user is a "resident" of Chicago.

42. **Purposes of Tax. § 4-156-1000.** The purpose of the Tax is "revenue generation for the City of Chicago by taxing the activity of social media amusement based on a social media business's monetization of consumer engagement and consumer data collected about Chicago users in conjunction with their social media use." § 4-156-1000.

43. The Budget Director and the Comptroller are also mandated to use the proceeds from the Tax to "create and implement a special revenue fund for support to the City's mental and behavioral health operations and investments." § 4-156-1000.

44. **Penalties. § 4-156-1070.** The Tax imposes penalties for any violation. § 4-156-1070.

45. For *each individual day of violation*, social media businesses are assessed a "fine of not less than $2,500.00 nor more than $10,000.00 for each offense." *Id.*

46. Social media businesses are also subject to additional penalties relating to the failure to file a return and the late payment or filing of a return, along with the imposition of interest. *See* §§ 3-4-190 *et seq*.

47. **Relation to Other Chicago Taxes.** Chicago's per-user Social Media Amusement Tax is different from the City's taxes on amusements—in its rate, method of taxation, and purpose.

48. For example, the City's amusement tax is "nine percent of the admission fees or other charges paid for the privilege to enter, to witness, to view or to participate in such amusement." § 4-156-020(A)(1).

49. And the City's amusement tax imposed on online services is "ten and twenty-five hundredths (10.25) percent of the charges paid for the privilege to view or to participate in such amusement." § 4-156-020(A)(2).

50. Neither of the taxes under § 4-156-020(A) imposes a per-user flat tax.

51. Neither of the taxes under § 4-156-020(A) is imposed on activity engaged in prior to the effective date of the taxes.

52. Neither of the taxes under § 4-156-020(A) is imposed based on the location of a "Chicago resident," as defined in the Tax.

CLAIMS

COUNT I
47 U.S.C. § 151 (NOTE)
FEDERAL STATUTORY PREEMPTION UNDER THE INTERNET TAX FREEDOM ACT

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

54. The Tax is unlawful under the Internet Tax Freedom Act, which prohibits state and local governments ("political subdivisions") from imposing "discriminatory taxes on electronic commerce." ITFA § 1101(a)(2).

55. ITFA was enacted by Congress in 1998 "to enhance" the development of electronic commerce conducted over the Internet and "eliminate[] efforts that will impede its growth" by

restricting the kinds of taxes that state and local governments could impose on Internet-based transactions. H.R. Rep. No. 105-570, 105th Cong., 2d Sess., at 7 (1998).

56. ITFA defines "electronic commerce" as "any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration[.]" ITFA § 1105(3).

57. Social media businesses' activities subject to the Tax constitute "electronic commerce." *See* ITFA § 1105(3). The online delivery of social media services to Chicago consumers and the social media businesses' corresponding online collection and use of their consumer data, other than the consumer's contact information, in support of those social media businesses' activities are electronic commerce.

58. ITFA defines a "tax" as "any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred." *Id.* § 1105(8)(A)(i).

59. The Social Media Amusement Tax is a "tax" for purposes of ITFA because it is a charge imposed by the City for the purpose of generating revenues for governmental purposes. *See* § 4-156-1000 (identifying the Tax's purpose as "revenue generation for the City of Chicago").

60. ITFA's ban on a "discriminatory tax" applies to a political subdivision's tax on electronic commerce that "is not generally imposed and legally collectible by . . . such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means." ITFA § 1105(2)(A).

61. In *Performance Marketing Association, Inc. v. Hamer*, 2013 IL 114496, the Illinois Supreme Court held that an Illinois use tax statute violated ITFA. The Illinois statute imposed a use tax collection responsibility on retailers that advertised their products using digital, Internet-

based marketing to Illinois consumers. In contrast, the use tax did not impose a comparable tax collection responsibility on retailers that advertised using non-Internet-based methods. Because the tax was targeted specifically at Internet-based advertising, the Illinois Supreme Court concluded that the tax was a "discriminatory tax on electronic commerce within the meaning of the ITFA," was "expressly preempted by the ITFA," and was "therefore void and unenforceable." *Id*. at ¶ 23.

62. Here, the Tax is a "discriminatory tax" because it is: (1) a "tax"; (2) imposed by a political subdivision; (3) on electronic commerce; and (4) not generally imposed and legally collectible by Chicago on transactions involving similar services accomplished through other (*i.e.*, offline) means.

63. A tax that is imposed exclusively on Internet-delivered services (*i.e.*, those services that have no "similar" off-line equivalent) are discriminatory taxes under ITFA. As Rep. Christopher Cox, who co-sponsored ITFA, explained in the House Committee Report:

> Taken together, [ITFA's "discriminatory tax" definition] mean[s] that property, goods, services, or information that are sold exclusively over the Internet—with no comparable off-line equivalent—would be protected from taxation for the duration of the moratorium. Examples of such transactions include, but are not limited to, electronic mail over the Internet, Internet site selections, Internet bulletin boards, and Internet search services.

H.R. Rep. No. 105-570, at 33.

64. The Tax is imposed on online social media services offered by businesses that collect consumer data on more than 100,000 Chicago consumers. Thus, the Tax is not generally imposed and legally collectible by Chicago on transactions involving similar services accomplished through offline means.

65. Similar to the tax collection obligation struck down in *Performance Marketing Association*, the Tax singles out and targets online social media businesses for taxation and is not imposed on any offline services.

66. Because the Tax imposes a tax obligation on electronic commerce that is not imposed on similar offline commerce, it constitutes a "discriminatory tax on electronic commerce" within the meaning of ITFA and is expressly preempted by federal law.

67. The Tax should therefore be declared invalid under ITFA.

68. Unless declared invalid, preempted, and enjoined, the Tax will unlawfully deprive Plaintiff's members of their rights and will irreparably harm Plaintiff and its members.

COUNT II
ART. VII, SECTION 6(E) OF THE ILLINOIS CONSTITUTION
OCCUPATION TAX UNAUTHORIZED BY THE GENERAL ASSEMBLY

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

70. The Tax is unlawful under Article VII, Section 6(e) of the Illinois Constitution, which provides that a "home rule unit shall have only the power that the General Assembly may provide by law . . . (2) to . . . impose taxes . . . upon occupations"—*i.e.*, a tax imposed on a particular profession or provider of particular services. Thus, a Chicago tax on occupations is barred unless authorized by the Illinois General Assembly.

71. **The Tax is a Tax on Occupations.** The Supreme Court of Illinois has identified three types of taxes that constitute an occupation tax, specifying any tax that:

a. "Regulates and controls a given occupation";

b. "Imposes a tax for the privilege of engaging in a given occupation, trade or profession"; or

c. "Imposes a tax on the privilege of engaging in the business of selling services."

Illinois Gasoline Dealers Ass'n v. City of Chicago, 119 Ill.2d 391, 399 (1988).

72. Illinois courts further apply the following three factors to determine whether a tax is an occupation tax:

a. "Who bears the responsibility for collecting and remitting the tax to the city";

b. "Whether the provider of services is responsible for payment of the tax regardless of whether the patrons pay the tax"; and

c. "Whether the provider of services is subject to penalties for non-payment of the subject tax."

Communications & Cable of Chicago, Inc. v. City of Chicago, 282 Ill.App.3d 1038, 1044 (1996) (citations omitted).

73. The Tax qualifies as a prohibited occupation tax under both sets of criteria:

a. First, the Tax is imposed on for-profit social media businesses, for the privilege of providing social media activities to users, including Chicago residents. Further, the Tax is imposed on the privilege of engaging in social media and data collection services.

b. Second, social media businesses, rather than their Chicago consumers, bear the entire responsibility for paying the Tax to the City. The City also imposes penalties for non-compliance with—including non-payment of—the Tax.

74. **The Tax is Not Authorized by the General Assembly.** The General Assembly has authorized the City to impose a tax on "amusements" and "all places for . . . amusement." 65 ILCS 5/11-42-5. However, that authorization does not authorize the imposition of the Social Media Amusement Tax for three reasons:

a. First, rather than taxing amusements, the Tax is imposed on social media that is used by consumers for numerous non-amusement purposes, such as monitoring

local safety and security, exploring employment opportunities, and accessing live-breaking news updates. *See Chicago Health Clubs, Inc. v. Picur*, 124 Ill.2d 1, 13-14 (1988) (holding that Chicago's expansion of its Amusement Tax to racquetball and health clubs violated the Illinois Constitution because such places included many non-amusement activities). Thus, despite its name, the Tax applies to non-amusement activities.

b. Second, the imposition of the Tax is measured by data collection and is not dependent on the extent to which a Chicago consumer accesses social media. For example, the Tax is not like a tax on admission receipts from the sale of a concert ticket or on the sale of a subscription streaming service. Instead, the Tax is based on whether a social media business collects data from Chicago consumers, regardless of whether a consumer uses a social media website for five minutes per month or five times per week. And, regardless of whether a social media business actually uses the collected data. The Tax is a tax on social media business' data collection, not the consumer's use of social media, and not the social media business's use of the consumer's data.

c. Third, a social media website is not a "place[] for" of amusement, as it is not a physical location.

75. The Tax is imposed upon an occupation without authorization by the General Assembly.

76. The Tax is unlawful under Article VII, Section 6(e) of the Illinois Constitution and should be declared invalid.

77. Unless declared invalid and enjoined, the Tax will unlawfully deprive Plaintiff's members of their rights and will irreparably harm Plaintiff and its members.

COUNT III
VIOLATION OF THE FIRST AMENDMENT,
AS INCORPORATED THROUGH THE FOURTEENTH AMENDMENT

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

79. The First Amendment of the U.S. Constitution provides that "Congress shall make no Law . . . abridging the Freedom of Speech, or of the Press; or of the Right of the People peaceably to assemble." U.S. Const. amend. I. The protections of the First Amendment have been incorporated by the Due Process Clause of the Fourteenth Amendment to the Constitution to restrict States and their subdivisions, including Chicago. These protections apply with full force to online expression, and governments cannot "regulate ['social media'] free of the First Amendment's restraints." *Moody*, 603 U.S. at 726-27 (citation omitted).

80. **Chicago's Social Media Tax Implicates the First Amendment.** The U.S. Supreme Court's "cases clearly establish that a discriminatory tax on the press burdens rights protected by the First Amendment." *Arkansas Writers' Project*, 481 U.S. at 227; *see Minneapolis Star*, 460 U.S. at 579; *Grosjean*, 297 U.S. at 251.

81. These U.S. Supreme Court precedents are not limited to the journalistic press, as "liberty of the press . . . comprehends every sort of publication which affords a vehicle of information and opinion." *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938).

82. Here, the Tax implicates the two kinds of discrimination that the U.S. Supreme Court's has recognized. Each would independently subject the Tax to heightened First Amendment scrutiny.

83. First, "in contrast to generally applicable economic regulations to which the press can legitimately be subject," the Tax "treat[s] the press"—*i.e.*, social media websites—"differently from other enterprises." *Arkansas Writers' Project*, 481 U.S. at 228. In particular, the Tax treats online services differently from other media. And, within the category of publications (online and offline), the Tax treats "social media" differently from those other of publications. Indeed, it expressly exempts what it calls "bona fide news website[s]" § 4-156-1010.

84. Second, "the tax target[s] a small group of" social media businesses. *Arkansas Writers' Project*, 481 U.S. at 228; *see Minneapolis Star*, 460 U.S. at 591; *Grosjean*, 297 U.S. at 251.

85. **Chicago's Social Media Amusement Tax Triggers Strict Scrutiny in Multiple Ways.** There are multiple reasons to subject the Tax to strict First Amendment scrutiny.

86. As an initial matter, *any* "tax that burdens rights protected by the First Amendment cannot stand unless the burden is necessary to achieve an overriding governmental interest." *Minneapolis Star*, 460 U.S. at 582.

87. In addition, the Tax chooses its targets for discriminatory taxation based on content. *Arkansas Writers' Project*, 481 U.S. at 229.

88. Specifically, the Tax triggers strict scrutiny because its definition of regulated "social media business[es]," § 4-156-1010—including that definition's various thresholds and exemptions—is content based.

89. 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 modified). "Content-based laws . . . are presumptively unconstitutional." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (citation omitted).

90. The Tax excludes websites from taxation based on the content they generally disseminate. *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 591 U.S. 610, 619 (2020) (controlling plurality op.) (content-based exceptions trigger strict scrutiny); *e.g.*, *Murrill*, 2025 WL 3634112, at *31; *Carr,* 789 F. Supp. 3d at 1221; *Yost*, 778 F. Supp. 3d at 954; *NetChoice, LLC v. Griffin,* No. 5:23-cv-5105, 2025 WL 978607, at *8-9 (W.D. Ark. Mar. 31, 2025) ("*Griffin II*").

91. For example, the Tax excludes "any bona fide *news* website, application, or platform." § 4-156-1010 (emphasis added).

92. The Tax likewise exempts "single-purpose community groups for *education* or *public safety*." § 4-156-1040(a)(9) (emphases added).

93. News, education, and public safety are all content-based categories of speech.

94. Regardless, "laws 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) (citation modified).

95. **The Tax Fails Strict First Amendment Scrutiny.** The Tax is presumptively unconstitutional and cannot survive strict or heightened First Amendment scrutiny.

96. Under strict scrutiny, the State must use "the least restrictive means of achieving a compelling state interest." *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (quoting *McCullen v. Coakley*, 573 U.S. 464, 478 (2014)).

97. As an initial matter, Chicago lacks a sufficient governmental interest in imposing the discriminatory Tax.

98. Chicago cannot defend the Tax based on its general interest in "the raising of revenue. Of course that interest is critical to any government. Standing alone, however, it cannot

justify the special treatment of the press [here, social media websites], for an alternative means of achieving the same interest without raising concerns under the First Amendment is clearly available: the [City] could raise the revenue by taxing businesses generally, avoiding the censorial threat implicit in a tax that singles out the press." *Minneapolis Star*, 460 U.S. at 586.

99. The Tax is not properly tailored to any articulated interest.

100. As in *Arkansas Writers' Project*, where the State taxed only general-interest magazines while exempting newspapers and favored journals, the City's selective approach "fosters communication" only for preferred speakers while burdening others without justification. 481 U.S. at 227-29.

101. At the same time, the Tax is overinclusive because it sweeps in covered websites solely by reference to size or status, regardless of whether their speech meaningfully implicates the City's asserted interests. This mismatch between means and ends mirrors the constitutional defect identified in *Arkansas Writers' Project*. *Id.* at 227-28.

102. The Tax therefore violates the First Amendment and should be declared invalid.

103. Unless declared invalid and enjoined, the Tax will unlawfully deprive Plaintiff's members of their fundamental First Amendment rights and will irreparably harm Plaintiff and its members.

COUNT IV
VIOLATION OF THE U.S. CONSTITUTION COMMERCE CLAUSE'S REQUIREMENT OF FAIR APPORTIONMENT

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

105. The U.S. Constitution's Commerce Clause provides that: "The Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const., art. I, sec. 8, cl. 3.

106. To survive Commerce Clause scrutiny, a state tax must meet a four-part test: (1) the taxed activity must be sufficiently connected to the State to justify the tax; (2) the tax must not discriminate against interstate commerce; (3) the tax must be fairly apportioned; and (4) the tax must be fairly related to the benefits provided to the taxpayer. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 287 (1977). The Tax fails the fair apportionment requirement.

107. To satisfy fair apportionment, the Tax must be internally consistent. The internal consistency test looks to a tax's structure to assess whether application of an identical tax by every State would place interstate commerce at a disadvantage compared with intrastate commerce. *Comptroller of Treasury of Maryland v. Wynne*, 575 U.S. 542, 562 (2015) (collecting cases).

108. In assessing internal consistency, the U.S. Supreme Court requires a hypothetical replication of the challenged tax. Pursuant to this replication, if every State imposed a tax identical to the challenged tax and multiple taxation would result, the tax disadvantages interstate commerce relative to intrastate commerce. That disadvantage violates the Commerce Clause. *E.g.*, *Armco Inc. v. Hardesty*, 467 U.S. 638, 645 (1984); *Am. Trucking Ass'ns, Inc. v. Scheiner*, 483 U.S. 266, 284 (1987).

109. A user of social media may be considered a "resident" of multiple States because the Tax defines a Chicago resident as *either*: (i) an individual who is in the City, except for a temporary or transitory purpose, during the calendar year, *or* (ii) an individual who is domiciled in the City. *See* § 4-156-1010.

110. "Domicile" is defined as "the place where an individual has his or her true, fixed, permanent home and principal establishment, the place to which he or she intends to return whenever absent." 86 Ill. Admin. Code 100.3020(d).

111. Many users will be "residents" of both Chicago and other jurisdictions. They will be located in Chicago for other than a temporary or transitory purpose, while remaining domiciled elsewhere.

112. For example, a student domiciled in New York who attends a Chicago university will be considered a Chicago resident (because of the student's non-temporary presence) *and* a New York resident (because that is where the student is domiciled). If all States—and localities—imposed an identical Tax, the social media business will be taxed on the same "consumer" in both Chicago and New York—resulting in multiple taxation, in violation of internal consistency.

113. The Tax is internally inconsistent and therefore is unfairly apportioned and unlawful under the Commerce Clause of the U.S. Constitution and should be declared invalid.

RELIEF REQUESTED

Plaintiff respectfully requests an order and judgment:

A. declaring that the Chicago Social Media Amusement Tax, Chi. Mun. Code, §§ 4-156-1000 *et seq.*, is unlawful;

B. declaring that the Chicago Social Media Amusement Tax, Chi. Mun. Code, §§ 4-156-1000 *et seq.*, is unlawful as preempted by the Internet Tax Freedom Act, 47 U.S.C. § 151 (note);

C. declaring that the Chicago Social Media Amusement Tax, Chi. Mun. Code, §§ 4-156-1000 *et seq.*, violates Article VII, Section 6 of the Illinois Constitution;

D. declaring that the Chicago Social Media Amusement Tax, Chi. Mun. Code, §§ 4-156-1000 *et seq.*, violates the First Amendment to the U.S. Constitution;

E. declaring that the Chicago Social Media Amusement Tax, Chi. Mun. Code, §§ 4-156-1000 *et seq.*, violates the Commerce Clause of the U.S. Constitution;

F. enjoining the Defendants from enforcing and collecting the Chicago Social Media Amusement Tax, Chi. Mun. Code, §§ 4-156-1000 *et seq*., including as against NetChoice's members;

G. entering judgment for Plaintiff; and

H. awarding Plaintiff all other such relief as the Court deems proper and just.

Dated: March 13, 2026

Respectfully submitted,

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