

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

**NETCHOICE, LLC**

**PLAINTIFF**

**v.**

**CASE NO. 5:23-cv-05105-TLB**

**TIM GRIFFIN, in his official capacity  
as Attorney General of Arkansas**

**DEFENDANT**

**MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff NetChoice, LLC (“NetChoice”), by and through its attorneys, files this Motion for Preliminary Injunction against Tim Griffin, in his official capacity as Attorney General of Arkansas, pursuant to Federal Rule of Civil Procedure 65(a). NetChoice respectfully asks the Court to preliminarily enjoin Attorney General Griffin, as well as all officers, agents, and employees subject to his supervision, direction, or control (including prosecutors charged with enforcing the criminal provisions of S.B. 396), from enforcing or otherwise bringing suit against NetChoice and its members under S.B. 396. NetChoice respectfully asks the Court to issue the injunction before September 1, 2023, when S.B. 396 is scheduled to take effect. In support of its Motion, NetChoice states as follows:

1. On June 29, 2023, NetChoice filed a Complaint, which is incorporated fully herein. *See* ECF No. 2.

2. As set forth in the Complaint, this case involves a constitutional challenge to S.B. 396, which is set to take effect on September 1, 2023. S.B. 396 purports to protect minors from alleged harmful effects of “social media” by requiring “social media companies” to verify that any person seeking to create an account is at least 18 years old or has parental consent to create an account.

3. NetChoice submits a Memorandum in Support of the Motion for Preliminary Injunction, which is incorporated by reference. For the reasons set forth in that memorandum, NetChoice satisfies the four factors for granting a preliminary injunction against the enforcement of S.B. 396. *See Johnson v. Minneapolis Park & Rec. Bd.*, 729 F.3d 1094, 1095 (8th Cir. 2013).

4. NetChoice submits the following exhibits in support of the Motion for Preliminary Injunction, which are incorporated by reference:

- a. Exhibit A - Declaration of Carl Szabo, Vice President and General Counsel of NetChoice, LLC.
- b. Exhibit B - Declaration of Antigone Davis, Vice President, Global Head of Safety at Meta Platforms, Inc.
- c. Exhibit C - Declaration of David Boyle, Senior Director, Product at Snap Inc.
- d. Exhibit D - Declaration of Justyn Harriman, Senior Engineering Manager for Trust & Safety and Verification at Nextdoor.

WHEREFORE, NetChoice respectfully requests that the Court grant its Motion for Preliminary Injunction, enter an Order preliminarily enjoining Attorney General Griffin, as well as all officers, agents, and employees subject to his supervision, direction, or control (including prosecutors charged with enforcing the criminal provisions of S.B. 396), from enforcing or otherwise bringing suit against NetChoice and its members under S.B. 396 pending a decision on the merits of Plaintiff's claims, and for any other just and proper relief.

Date: July 7, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Marshall S. Ney, certify that a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system this 7th day of July, 2023, and that a copy of the same will be served via process server to the following:

Tim Griffin  
Attorney General of Arkansas  
323 Center Street  
Suite 200  
Little Rock, AR 72201

/s/ Marshall S. Ney  
Marshall S. Ney

**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS**

NETCHOICE, LLC,

*Plaintiff,*

v.

TIM GRIFFIN, in his official capacity as  
Attorney General of Arkansas,

*Defendant.*

Civil Action No. 5:23-cv-05105-TLB

**DECLARATION OF CARL SZABO IN SUPPORT OF  
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

I, Carl Szabo, declare as follows:

1. I am the Vice President and General Counsel of NetChoice, LLC. I submit this declaration in support of NetChoice's Motion for a 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.

2. In addition to providing legal counsel to NetChoice, I coordinate NetChoice's advocacy before legislative bodies, courts, and government agencies to promote NetChoice's mission of advancing free enterprise and free expression on the Internet.

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.”<sup>1</sup> In particular, we are dedicated to preserving the Internet as a vibrant marketplace for communication, commerce, and the exchange of ideas. When adults and teens are free to use online services without government-enacted restrictions, the public discourse is enriched. And the absence of such restrictions leaves parents free to choose whether, when, and how their teens use online services such as Facebook, Snapchat, Twitter, and Tiktok. All in all, NetChoice strongly believes in giving Americans choices in how they use the Internet.

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 span a broad array of companies that offer popular online services, including but not limited to: Amazon, AOL, eBay, Etsy, Expedia, Facebook, Instagram, Nextdoor, Lyft, Pinterest, Snap, TikTok, and Twitter.<sup>2</sup>

5. Although it is difficult to know with certainty which companies Senate Bill 396 regulates given its confusing structure and vague terminology, several NetChoice members appear to be regulated. Some appear to meet the Act’s definition of “social media company” because they provide online forums on which individuals may (i) create a public profile, establish an account, or register as a user for the purpose of interacting socially with other account holders, (ii) upload or create posts or content, (iii) view posts or content of others, and (iv) interact with other users, including by establishing connections through request and acceptance. *See* S.B. 396, §4-88-1101(7)(A). And some of the online services these NetChoice members offer appear to meet the Act’s definition of “social media platform” because they are public or semipublic Internet-based

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<sup>1</sup> Home, NetChoice, <https://perma.cc/3NPH-KH2T>.

<sup>2</sup> About Us, NetChoice, <https://perma.cc/4NPV-PLU7>.

services (i) that have users in Arkansas, and (ii) on which a substantial function of the service is to connect users to each other socially. *See* S.B. 396, §4-88-1101(8)(A). Moreover, many of these NetChoice members do not appear to fall under the Act’s exceptions, which are set forth in §4-88-1101(7)(B) (for “social media companies”) and §4-88-1101(8)(B)-(C) (for “social media platforms”). Further, Arkansas legislators responsible for S.B. 396 have stated publicly that the Act is meant to apply to at least some NetChoice members. *See, e.g.*, Jess Weatherbed, New Arkansas Bill to Keep Minors Off Social Media Exempts Most Social Media Platforms, *The Verge* (Apr. 13, 2023) (quoting statement by State Senator Tyler Dees). Thus, NetChoice members risk facing liability under the Act, should it take effect. Several NetChoice members have submitted declarations attesting to the irreparable harms they will suffer if the Act is allowed to go into effect.

6. Minors regularly use online services, including those operated by NetChoice members, to engage in a wide variety of speech-related activities. Many minors use online services to read the news, connect with friends, explore new interests, and follow their favorite sports teams and their dream colleges. Some minors use online services to showcase their creative talents to others, including their artwork, photography, writing, or other forms of creative expression. Other minors use online services to raise awareness about social causes and to participate in public discussion on the hottest topics of the day. Still others use online services to build communities and connect with people who share similar interests or experiences, which is particularly helpful for minors who feel isolated or are seeking support from others who understand their experiences. If the Act is allowed to go into effect, it will burden or eliminate the ability of many minors to engage in certain types of speech and access certain types of information by making it difficult or impossible for them to sign up for widely used online services.

7. NetChoice members actively implement measures to protect children who use their



online services. Members restrict sexual content, harassment, and bullying. Many members place age restrictions on who is able to create an account. Several use “age gating” to ensure that users are only able to view age-appropriate content. NetChoice members also provide tools parents can use to manage the time their children spend on their services, the content that they see, and the people with whom they interact. For example, Instagram’s “supervision tools” allow parents to see how much time their teens spend on Instagram, set time limits and scheduled breaks, receive updates on what accounts their teens follow and the accounts that follow their teens, and receive notifications if a change is made to their teens’ settings. TikTok has a “family pairing” feature that lets parents monitor screen time, restrict time spent on the app, and adjust settings. And Snapchat’s “family center” allows parents to monitor who their teens befriend and communicate with.

8. In addition to restricting the speech of minors, the Act would also burden the speech of adults. Adults will be required to provide “age verification”—e.g., “a digital copy of a driver’s license” or other “[g]overnment-issued identification,” §4-88-1102(c)(2)—before creating an account on a covered online service. *See* §4-88-1102(c)(1).

9. Whether it is to discuss their religious and political beliefs, engage in cross-cultural dialogue, or learn new skills, adults regularly use these online services as a vital source of information and means of communication. On Facebook, adults associate and assemble with like-minded individuals for countless purposes, including by taking part in religious services. On Twitter, adults can directly engage with their elected representatives, including by watching a politician launch a presidential campaign. On Pinterest, users can discover ideas for recipes, style, home decor, and more. On TikTok, users going through a difficult experience can find advice, support, and empathy. *See, e.g.,* Kate Wells, On #dementia TikTok, Family Caregivers Find Support and Bring the Disease to Light, NPR (Oct. 11, 2022), <https://archive.ph/wip/CyqMJ>. On

Snapchat, users can communicate with friends and family in fun and casual ways. And on Nextdoor, users can connect with neighbors, share local news, and borrow tools. The Act, should it take effect, would burden adult access to ubiquitous online services through age-verification requirements and would completely bar access by adults who lack digitized identification.

10. NetChoice has over two decades of experience advocating for online businesses and the principles of free speech and free enterprise on the Internet, so we are intimately familiar with the business models our members use and rely on to provide services to users and advertisers alike. That experience, combined with the practical applications of the law and declarations submitted by our members, leads us to conclude that the Act, should it take effect, would irreparably harm our members and their business models by repelling both adult and non-adult users. This could lead advertisers—the main source of revenue for many online services—to reduce or curtail their spending on advertisements on these websites.


11. If the Act takes effect on September 1, 2023, NetChoice’s mission to protect free speech and free enterprise online would be directly and substantially impaired.

12. Additionally, many of NetChoice’s members will face significant difficulty in implementing the Act’s provisions, hindering their business interests. Implementing the age-verification and parental-consent requirements, as well as its restrictions on information retention, will be costly for members. And the vagueness of the law’s provisions will make it difficult for members to determine whether the requirements apply to them in the first place and exactly what compliance entails. For example, the Act is unclear as to whether minors who hold an existing “social media” account prior to the law’s September 1, 2023 effective date must obtain parental consent, as §4-88-1102(a) suggests, or whether the parental-consent requirement is limited to “new account holder[s],” as §4-88-1102(b) suggests. There is also ambiguity about the extent to which

the law purports to apply outside of Arkansas. *Compare* §4-88-1102(a), (b)(2) (limiting regulation to “Arkansas user[s]”), *with* §4-88-1102(b)(1), (c) (containing no such limitation). In addition, the text of §4-88-1104 is so broad that it could potentially be construed as prohibiting online services’ longstanding, common-sense practice of requiring everyone who signs up for an account to provide their first and last name and either a valid email address or a phone number (although other parts of the Act counsel against such a broad reading). These ambiguities in the Act compound the difficulty and expense of efforts to comply with it.

13. In short, NetChoice members would incur substantial, unrecoverable costs in complying with S.B. 396’s burdensome requirements. These costs could not be recouped if NetChoice’s challenge to the law is ultimately successful on the merits.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing to be true and correct to the best of my knowledge. Executed on July 6, 2023 in Washington, DC.



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Carl Szabo

**EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

**NETCHOICE, LLC**

**PLAINTIFF**

**v.**

**CASE NO. 5:23-cv-05105-TLB**

**TIM GRIFFIN, in his Official Capacity  
as Attorney General of Arkansas**

**DEFENDANT**

**DECLARATION OF ANTIGONE DAVIS IN SUPPORT OF  
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

I, Antigone Davis, declare as follows based on personal knowledge:

1. I am the Vice President, Global Head of Safety, at Meta Platforms, Inc. ("Meta"), and have been employed in that position since October 2014. I am over the age of 18 years and maintain an office at 575 7th Street NW, Suite 700, in Washington, DC. I make this Declaration in support of Plaintiff's Motion for a Preliminary Injunction in the above-captioned matter. I have personal knowledge of the matters set forth in this Declaration as well as knowledge based on a review of company records kept in the ordinary course of business, and if called as a witness, I could and would testify under oath as follows.

2. I have dedicated the better part of my adult life to protecting the safety and well-being of young people. In my role at Meta, I lead the global team responsible for ensuring that Meta remains a leader in online safety, and my work covers safety across all of Meta's platforms and surfaces, including both Facebook and Instagram. As part of my role, I coordinate the efforts of Meta's Safety Advisory Council,<sup>1</sup> a team of leading safety organizations from around the world

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<sup>1</sup> Meta, *Learn More About the Meta Safety Advisory Council*, <https://en-gb.facebook.com/help/222332597793306>.

who provide Meta with cutting-edge research and advice on best practices, particularly relating to young people and other vulnerable groups. I also lead our work with our Youth Advisors, our advisory group on suicide prevention, and a global safety network of more than 850 organizations around the world.

3. I also serve on the boards of the National Center for Missing and Exploited Children (“NCMEC”) and the Technology Coalition, two organizations dedicated to fighting child sexual exploitation. I previously served on the boards of the National Cybersecurity Alliance, the Family Online Safety Institute, the National Network to End Domestic Violence, the National Center for the Victims of Crime, and the International Advisory Board for WePROTECT, a global alliance working to protect children from sexual exploitation and abuse online. Before working at Meta, I worked for the Office of the Maryland Attorney General, helping to establish the office’s first online privacy and safety unit.

4. In my role at Meta, I am familiar with Meta’s content policies and practices, including Facebook’s Terms of Service and Community Standards and Instagram’s Terms of Use and Community Guidelines.

### **Background**

5. Meta (f/k/a Facebook, Inc.) was founded in 2004. Meta’s services enable more than three billion people around the world to share ideas, offer support, and discuss important issues, including politics, public health, and social issues. Users of Meta’s services share over a billion stories and reels combined and over 100 billion messages, every day.

6. Meta’s mission is giving people the power to build community and bring the world closer together.<sup>2</sup>

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<sup>2</sup> Meta, *Company Information*, <https://about.meta.com/company-info/>.

7. On Facebook, people can share stories, photos, videos, captions, status updates, and links (among other types of content) with family and friends. People can also follow pages managed by businesses, organizations, and public figures (such as politicians or celebrities) that share content, as well as join groups or attend events that relate to topics of interest to them.

8. On Instagram, people can similarly share stories, photos, videos, captions, messages, and links (among other types of content) with family and friends. People can also follow and send messages to Instagram accounts managed by businesses, organizations, and public figures (such as politicians or celebrities) that share content.

9. Facebook displays content in Feed, a feature it launched in 2006. Feed shows a constantly updated and personalized list of stories—for example, status updates from friends, videos from family gatherings, articles from local or national news outlets, and much more.

10. Instagram similarly displays content in Instagram Feed, a feature it launched in 2010. Instagram Feed shows a constantly updated and curated list of photos and videos—for example, posts from friends, family, businesses, and news groups that the user follows, and much more.

**Teens and Adults Can Use Facebook and Instagram for Social, Informational, Educational, Political, and Other Purposes**

11. All users—from teens to adults—can use Facebook and Instagram for a variety of purposes, including to: make social connections; showcase creative talents; gather information about the world around them; learn and receive education; and participate in the democratic process.

12. ***Make Social Connections.*** Users can use Facebook and Instagram to make and foster social connections. Facebook’s features—such as Feed, Messenger, Stories, Groups and Pages—help people connect with friends, family, and communities of people who share their

interests.<sup>3</sup> For example, a high-school user might make a friend at school and connect with them on Facebook to stay in touch over the summer; engage with one-another's photos and videos during travels apart; and chat with mutual friends in the comments. Similarly, the Facebook Groups feature facilitates social connections among people who have similar interests—from stargazing to baking to parenting—and allows them to learn from and share with each other, and develop a network of like-minded individuals they may never have met otherwise.

13. Instagram also provides users with opportunities to catch up with friends and explore shared interests.<sup>4</sup> For instance, users can compose short posts (called Notes), which appear at the top of their followers' or close friends' inboxes. Users have said the Notes feature provides them with a casual and spontaneous way to express themselves, start conversations, and ask followers for recommendations. Instagram users can also share photos, videos, and messages with their friends.

14. ***Showcase Creative Talents.*** Facebook and Instagram also provide outlets for creative expression. Users can share their artwork, photography, and poetry with their friends through the Feed and Stories features on both Facebook and Instagram. Further, artists looking to grow their business can create business pages on Facebook and Instagram, allowing them to expand their reach, share their art with wider audiences, and connect with potential customers.<sup>5</sup> An Independent Artist Program allows undistributed musicians to easily distribute their music on

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<sup>3</sup> Meta, *About Facebook*, <https://about.meta.com/technologies/facebook-app/>.

<sup>4</sup> Meta, *Introducing New Ways to Connect on Instagram* (Dec. 13, 2022), available at <https://about.instagram.com/blog/announcements/updates-to-instagram-messenger-and-stories>.

<sup>5</sup> Meta, *Meta Business Suite*, <https://www.facebook.com/business/tools/meta-business-suite>.



Facebook and Instagram, providing aspiring musicians with an opportunity to not only share their creative talents, but also to earn money and gain insights into who is listening to their content.<sup>6</sup>

15. *Gather Information About the World.* Charities, businesses, sports teams, restaurants, retail businesses, and more have pages or profiles on Facebook and Instagram. Users, including parents, can access these profiles to learn more about the world around them—for example, to identify opportunities with youth organizations in their area—like the Boy and Girl Scouts of America, YMCA, and 4-H, all of which have pages on Facebook and Instagram. They can access pages to get more information about their favorite sports teams—such as to learn when the next Arkansas Razorbacks Basketball game is scheduled or to see highlights from the Arkansas State Track team’s latest meet. Users, depending on their age and interests, might seek out Facebook or Instagram pages to learn about events at their local teen center; opportunities to adopt pets from local animal shelters; hear about vendors that will be at their local farmers’ market; or discover weekly specials at their favorite restaurants.

16. Facebook and Instagram also allow both individual users and nonprofits to tap into their networks and fundraise for causes they care about. Through Facebook and Instagram, users have raised more than \$7 billion for important causes, ranging from funding medical research to donating school supplies to children in need.<sup>7</sup>

17. A wide range of global, national, and local news sources provide up-to-date reporting through their Facebook and Instagram pages. Following these pages equips users with a greater understanding of both the world around them and their local communities. For instance, the Federal Emergency Management Agency (FEMA) has a Facebook page, which provides the

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<sup>6</sup> Meta, *Meta Independent Artist Program*, <https://www.facebook.com/formedia/independent-artist-program>.

<sup>7</sup> Meta, *We Can Do More Together*, <https://about.meta.com/giving-together/>.

latest information about disasters around the nation and has instructions on how affected individuals can apply for disaster aid. On the local level, users can turn to community news organizations' pages on Facebook or Instagram to learn about the latest developments in local politics and keep abreast of community events.

18. ***Educational Opportunities on Facebook and Instagram.*** Facebook and Instagram provide users with access to educational opportunities. Through the Groups feature on Facebook, users can learn from and work with others to understand the world around them. For instance, users can learn about subjects ranging from math and phonics to astrophysics and philosophy. On Instagram, users can view reels with tutorials containing practical advice on everyday tasks, from fixing a sprinkler head to designing PowerPoint presentations. Aspiring college students can follow Facebook and Instagram pages for colleges and universities around the globe to learn about the application process, different courses of study, and student life. For some people, such as students who live in regions without postsecondary institutions, or for those who will be the first in their family to attend college, this material might not be easily available to them otherwise.

19. ***Participate in the Democratic Process.*** Many elected officials, candidates, and staff have accounts on Facebook and Instagram that they use to disseminate speech on political issues, as do political and issue-advocacy organizations. In many instances, users can interact with these accounts by following them, viewing the speech and content they share, and responding with speech and content of their own. Facebook and Instagram also offer a number of resources to help users keep themselves informed about the democratic process. Ahead of the 2020 general election, Facebook provided information about how to register to vote to every user of voting age in the United States, conducted multiple voter registration drives on Facebook and Instagram, and launched a Voting Information Center—which provides users with information about voting,

registration, and becoming a poll worker that is provided in collaboration with state election officials and nonpartisan organizations.<sup>8</sup> Ahead of the 2022 midterm elections, Facebook and Instagram placed the Voting Information Center at the top of users' feeds, and state and local election officials used Voting Alerts to send users more than 80 million election-related notifications.<sup>9</sup>

20. Meta has long recognized the importance of their users having a voice and allowing debate on topics about which people may disagree. But Meta takes action to block groups that disseminate hateful content and content that harasses or threatens violence. For example, Meta has banned more than a thousand militarized social movements and over 270 white supremacist organizations from its services. In the aftermath of Myanmar's military coup in February 2021, Meta banned Myanmar military and military-controlled state and media entities from Facebook and Instagram, but also protected content, including political speech, that allowed "the people of Myanmar to express themselves and to show the world what is transpiring inside their country."<sup>10</sup>

#### **Users' Experiences on the Facebook and Instagram Services**

21. A survey and interviews conducted by Harvard University in 2015 and 2016 found that teens viewed social media "predominantly" positively, though they reported both positive and negative impacts on their relationships and self-expression.<sup>11</sup> A study on the rates of Facebook adoption in 72 countries found that "overall, Facebook adoption positively predicted well-being,"

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<sup>8</sup> Meta, *Voting Information Center* (June 16, 2020), available at <https://about.fb.com/news/2020/06/voting-information-center/>.

<sup>9</sup> Meta, *Our Approach to Elections* (Oct. 4, 2022), available at <https://transparency.fb.com/features/approach-to-elections/>.

<sup>10</sup> Meta, *Myanmar Military Banned from Facebook and Instagram with Immediate Effect* (Feb. 24, 2021), <https://about.fb.com/news/2021/02/an-update-on-myanmar/>.

<sup>11</sup> Meta, *What Our Research Really Says about Teen Well-Being and Instagram* (Sept. 26, 2021), available at <https://about.fb.com/news/2021/09/research-teen-well-being-and-instagram/>.

an association that “held when comparing countries to other countries and to themselves over time.”<sup>12</sup>

22. Surveys have found that social media can promote connectedness, reduce social isolation, and help users find support. A recent Gallup survey found that 42% of persons aged 15 or older in the United States said they needed support or help from others in the past 30 days—and nearly one-third used Meta’s services to get that support.<sup>13</sup> A survey by the Pew Research center found that the large majority of teens (81%) agree that social media helps them connect, while some also pointed to its negative impacts, like 43% said they felt pressure to post things that make them “look good.”<sup>14</sup> Pew surveys have also found that “[m]ajorities of teens believe social media helps people their age diversify their networks,” and that 69% of teens say that social media helps them “interact with people from different backgrounds.”<sup>15</sup> A recent study on the use of social media during the COVID-19 pandemic found that social media helped adolescents connect with family and peers, provided them with sources of comedic relief, and enabled participation in “social activism and community efforts consistent with their values” during this period of relative isolation.<sup>16</sup>

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<sup>12</sup> Matt Vuorre & Andrew K. Przybylski, *Estimating the Association Between Facebook Adoption and Well-being in 72 countries*, PsyArXiv (Sept. 16, 2022), available at <https://psyarxiv.com/r794k/>.

<sup>13</sup> Meta & Gallup, *The State of Social Connections* (2022), available at <https://www.gallup.com/analytics/402911/state-of-social-connections-study.aspx>.

<sup>14</sup> Pew Research Center, *Teens’ Social Media Habits and Experiences* (Nov. 28, 2018), available at <https://www.pewresearch.org/internet/2018/11/28/teens-social-media-habits-and-experiences/> [hereinafter “Pew Research”].

<sup>15</sup> *Id.*

<sup>16</sup> Sarah E. Rimel et al., *Technology Use During the COVID-19 Pandemic and the Ways in Which Technology Can Support Adolescent Well-being: Qualitative Exploratory Study*, JMIR Formative Research (2023), available at <https://formative.jmir.org/2023/1/e41694>.

23. Studies have also found that online-only friendships can be a source of social support for youth who may be marginalized in their offline social environments. A study in the *Journal of Clinical Child and Adolescent Psychology* found that “youth who are at-risk for suicide, such as those who are LGBTQ . . . or have medical conditions, can gain support from online-only friendships who are going through similar experiences.”<sup>17</sup> A study in the journal of *Child Abuse and Neglect* found that LGBTQ youth rate their online-only friendships as more supportive than in-person relationships and suggested that online spaces can provide “safe haven[s]” for them.<sup>18</sup>

24. For individuals with mental health issues, surveys have found that social media services can be a valuable source of information and support. A 2018 national survey found that “many young people say social media helps them find connection, support, and inspiration during times of depression, stress, or anxiety”—and among those with symptoms of depression, 30% said that social media is “very” important to them for feeling less alone.<sup>19</sup> A 2019 literature review found that “there is an association between high levels of psychological distress and engaging in help-seeking online”—and that “many young people were going online to look for a space where they could share their feelings without fear of judgement or labelling.”<sup>20</sup> The authors added: “The nonstigmatizing nature of internet help-seeking makes it an attractive option for marginalized

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<sup>17</sup> Maya Massing-Schaffer et al., *Adolescent Peer Experiences and Prospective Suicidal Ideation: The Protective Role of Online-Only Friendships*, *J. of Clinical Child and Adolescent Psych* 9 (2022), available at <https://pubmed.ncbi.nlm.nih.gov/32324048/>.

<sup>18</sup> Michelle Ybarra et al., *Online Social Support as a Buffer Against Online and Offline Peer and Sexual Victimization Among U.S. LGBT and Non-LGBT Youth*, 39 *Child Abuse & Neglect* 123–36 (2014), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6483382/>.

<sup>19</sup> Victoria Rideout & Susannah Fox, *Digital Health Practices, Social Media Use, and Mental Well-Being Among Teens and Young Adults in the U.S.*, *Articles, Abstracts, and Reports* 1093 (2018), available at <https://digitalcommons.pshealth.org/publications/1093/>.

<sup>20</sup> Claludette Pretorius et al., *Young People's Online Help-Seeking and Mental Health Difficulties: Systematic Narrative Review*, 21 *J. of Med. Internet Rsch.* (2019), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6891826/>.

groups” such as “members of the LGBT+ community who may be fearful of disclosing personal concerns to their informal networks.”<sup>21</sup>

25. Studies have also observed that using social media to learn about public affairs and one’s community can promote civic engagement. A study in the *Journal of Computer-Mediated Communication* concluded that seeking information via social media services like Facebook “is a positive and significant predictor of people’s social capital and civic and political participatory behaviors, online and offline.”<sup>22</sup> And a Pew Research survey found that roughly two-thirds of teens say that social media exposes them to different points of view and that majorities of teens believe social media can help them “broaden their viewpoints and get involved with issues they care about.”<sup>23</sup>

#### **Meta’s Efforts to Promote Safety on Facebook and Instagram**

26. Meta has invested substantial resources to promote a safe experience for its community. This work is core to Meta’s mission of designing and building services that bring people together. Meta wants its services to be a place for meaningful interactions with friends and family, and cannot achieve that goal if people do not feel safe.

27. ***Age Verification.*** Pursuant to Facebook’s Terms of Service and Instagram’s Terms of Use, if a child in the United States is under the age of 13, they are not allowed to create an account on Facebook or Instagram and should not be using the services. When Meta learns an underage user has created a Facebook or Instagram account, Meta removes the account from the

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<sup>21</sup> *Id.*

<sup>22</sup> Homero Gil de Zúñiga et al., *Social Media Use for News and Individuals’ Social Capital, Civic Engagement and Political Participation*, 17 *J. of Comput.-Mediated Commc’n* 319 (2012), available at <https://online.library.wiley.com/doi/full/10.1111/j.1083-6101.2012.01574.x>.

<sup>23</sup> Pew Research, *supra*, at 2.

service. In addition to asking for people's date of birth when they create an account and allowing anyone to report a suspected underage account, Meta trains its content reviewers to flag for further investigation reported accounts that appear to be used by people who are underage, and removes those accounts unless the user is able to prove that they meet the minimum age requirements.<sup>24</sup>

28. Parents and guardians can use supervision tools on Instagram to help support their teens (ages 13-17). Through this set of tools, with the consent of their teen, parents can monitor how much time their teen is spending on Instagram, set time limits on their teen's daily Instagram use, and schedule breaks that limit their teen's use of Instagram during specific days and hours. Parents can also gain insight into their teen's activities by viewing which accounts their teen is following, which accounts follow their teen, and which accounts their teen is currently blocking. In addition, these tools allow parents to view their teen's account privacy settings, sensitive content settings, and messaging settings.<sup>25</sup>

29. *Safety Features for Young Users.* Meta helps prevent young people from interacting with adults they don't know. Meta has developed technology that allows it to estimate people's ages to determine, for example, whether someone is younger or older than 18. Meta uses this technology to restrict people over 19 years old from sending private messages to teens who do not follow them on Instagram.<sup>26</sup> Meta also uses its predictive age technology on Instagram to prevent adults that have shown potentially suspicious behavior from interacting with or seeing posts from young people's accounts. Similarly, Meta is testing ways to protect teens from

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<sup>24</sup> Meta, *How Do We Know Someone Is Old Enough to Use Our Apps?* (July 27, 2021), available at <https://about.fb.com/news/2021/07/age-verification/>.

<sup>25</sup> Meta, *Parental Supervision*, <https://help.instagram.com/309877544512275>.

<sup>26</sup> Meta, *Continuing to Make Instagram Safer for the Youngest Members of Our Community* (Mar. 17, 2021), available at <https://about.instagram.com/blog/announcements/continuing-to-make-instagram-safer-for-the-youngest-members-of-our-community>.



messaging suspicious adults they are not connected to, and will not show such adults in teens' People You May Know recommendations on Facebook.

30. Instagram notifies teens via prompts and safety notices to be cautious in conversations with adults to whom they are already connected. When an adult who has been exhibiting potentially suspicious behavior is interacting with a young person in Direct Messages, Instagram will warn the young person about interacting with someone they do not know. For example, if an adult is sending a large amount of friend or message requests to people under 18, Instagram will use this tool to alert the recipients within their Direct Messages and give them an option to end the conversation, or block, report, or restrict the adult.<sup>27</sup>

31. Instagram accounts are private by default for all new users under the age of 16. Private accounts let people control who sees or responds to their content.<sup>28</sup> Similarly, Facebook defaults U.S. users under the age of 16 into more private settings when they create their accounts. Facebook also encourages existing teen users to choose more private settings—for instance, restricting who can see their friends list, who can see their tagged posts, and who is allowed to comment on their public posts.<sup>29</sup>

32. In an effort to provide age-appropriate experiences for young people on Facebook and Instagram, Meta “age-gates” certain content. Under Meta’s policies on restricted and

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<sup>27</sup> Meta, *Continuing to Make Instagram Safer for the Youngest Members of Our Community* (Mar. 17, 2021).

<sup>28</sup> Meta, *Giving Young People a Safer, More Private Experience on Instagram*, available at <https://about.fb.com/news/2021/07/instagram-safe-and-private-for-young-people/>.

<sup>29</sup> Meta, *Protecting Teens and Their Privacy on Facebook and Instagram* (July 27, 2021), available at <https://about.fb.com/news/2022/11/protecting-teens-and-their-privacy-on-facebook-and-instagram/>.



prohibited goods, branded content, and affiliate posts involving certain adult goods—such as alcohol, real-money gambling, and state lotteries—cannot be provided to minors’ accounts.<sup>30</sup>

33. **Content Moderation.** Meta’s publicly available Facebook Terms of Service<sup>31</sup> (to which people must agree to create an account on the Facebook service) and Community Standards<sup>32</sup> (which users agree not to violate) describe what content is acceptable on Facebook. Meta’s publicly available Instagram Terms of Use<sup>33</sup> (to which users must agree to create an account on the Instagram service) and Instagram Community Guidelines<sup>34</sup> (which users agree not to violate) describe what content is acceptable on Instagram.

34. The Facebook Terms of Service prohibit users from doing or sharing anything that is “unlawful, misleading, discriminatory or fraudulent” or that “infringes or violates someone else’s rights.”<sup>35</sup> The Facebook Community Standards provide details about what content is not allowed on Facebook. The Community Standards are organized into six categories: (i) violence and criminal behavior, (ii) safety, (iii) objectionable content, (iv) integrity and authenticity, (v) respecting intellectual property, and (vi) content-related requests and decisions. Within each of those six categories, the Community Standards identify additional subcategories, such as “violent and graphic content,” and “bullying and harassment.” Users can see Facebook’s policy rationale

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<sup>30</sup> Meta, *Set a Minimum Age for Branded Content or Affiliate*, <https://www.facebook.com/business/help/246699553504225?id=603237934047137>.

<sup>31</sup> *Facebook Terms of Service*, <https://www.facebook.com/terms.php> [hereinafter Facebook Terms].

<sup>32</sup> *Facebook Community Standards*, <https://transparency.fb.com/policies/community-standards/> [hereinafter Facebook Community Standards].

<sup>33</sup> *Instagram Terms of Use*, <https://help.instagram.com/581066165581870> [hereinafter Instagram Terms].

<sup>34</sup> *Instagram Community Guidelines*, <https://help.instagram.com/477434105621119> [Hereinafter Instagram Community Guidelines].

<sup>35</sup> Facebook Terms, *supra*.

for prohibiting each category of content and examples. For example, the Community Standards explain that “bullying and harassment” is not tolerated on Facebook. Notwithstanding, Facebook recognizes that people sometimes share content that illustrates bullying or harassment to condemn it or raise awareness. Facebook’s policies are designed to allow room for these types of speech. The Community Standards also include information about when content may be accompanied by a sensitivity warning.<sup>36</sup>

35. Similarly, the Instagram Terms of Use prohibit users from doing or sharing anything that is “unlawful, misleading, or fraudulent, or for an illegal or unauthorized purpose[]” or that would “violate[] someone else’s rights,” and from “post[ing] someone else’s private or confidential information without permission.”<sup>37</sup> The Instagram Community Guidelines provide detail about what content is not allowed on Instagram, including prohibiting “coordination of harm,” “nudity,” “hate speech,” and “bullying and harassment.”<sup>38</sup>

36. Meta relies on both automated and human review to enforce its terms and policies at scale.<sup>39</sup> For many categories of content that violate Meta’s policies, such as violent and graphic content and suicide and self-injury content, Meta’s artificial intelligence systems find more than 90% of the content it removes before anyone reports it.<sup>40</sup> Meta has also built artificial intelligence technology to identify suicide-related content and rapidly respond with resources. For other

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<sup>36</sup> Facebook Community Standards, *supra* (categories as of June 29, 2023); Meta, *Community Standards for Bullying and Harassment*, <https://transparency.fb.com/policies/community-standards/bullying-harassment/>.

<sup>37</sup> Instagram Terms, *supra*.

<sup>38</sup> Instagram Community Guidelines, *supra*.

<sup>39</sup> Meta, *Detecting Violations*, <https://transparency.fb.com/enforcement/detecting-violations/>.

<sup>40</sup> Meta, *Community Standards Enforcement Report* (May 2023), <https://transparency.fb.com/data/community-standards-enforcement/>.

categories of content—such as content that may reflect bullying or harassment—using technology to proactively detect those behaviors can be more challenging than other types of violations. Meta also relies on people to report that behavior so Meta can identify and remove it. Meta also works with first responders to conduct wellness checks based on reports it receives via proactive detection efforts.

37. Thousands of people across the company work together to remove millions of pieces of content containing adult nudity, sexual activity, bullying and harassment, child nudity and sexual exploitation of children, and hate speech.

38. In Meta’s Transparency Center,<sup>41</sup> Meta publicly shares information to help keep people safe and let people hold Meta accountable—including information about Meta’s policies (which define what is and isn’t allowed on Meta technologies); Meta’s transparency reports (which give the community visibility into how Meta enforces its policies); and Meta’s enforcement reports (which detail Meta’s progress on taking action on content that violates its policies).

39. Meta has a robust system in place to restrict or remove content that violates its policies. For example, Meta restricts the ability of users under 18 to view graphic and violent imagery.<sup>42</sup> For other users, Meta will add warning labels to some graphic or violent imagery so that users are aware of its sensitive nature before they click through. Meta also removes content that goes against the Facebook Community Standards or Instagram Community Guidelines. For example, in Q1 2023, Meta took action on 3.1 million pieces of content on Facebook that violated

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<sup>41</sup> Meta, *Transparency Center*, <https://transparency.fb.com/>; Meta, *Community Standards Enforcement Report* (May 2023), available at <https://transparency.fb.com/data/community-standards-enforcement/>.

<sup>42</sup> Meta, *Violent and Graphic Content*, <https://transparency.fb.com/en-gb/policies/community-standards/violent-graphic-content>.

its suicide and self-injury policies, and over 97% of that content was removed before any user reported it.<sup>43</sup>

40. When it removes content, Meta will notify the posting user. When Meta removes a user's content for violating Meta's policies, the user may incur a strike against their account.<sup>44</sup> For most violations, a first strike results in a warning. If Meta removes additional posts that violate the Facebook Community Standards or Instagram Community Guidelines, the user will incur additional strikes to their account and may lose access to some features for longer periods of time.<sup>45</sup> If a user continues to post content that goes against Meta's policies, despite repeated warnings and restrictions, Meta may disable or remove the user's account.<sup>46</sup>

41. Meta also has tools that enable users to curate their experience on its services—for example, choosing a list of "Favorite" friends and pages to feature in Feed, blocking content from certain users, and reporting content they consider inappropriate. Facebook gives users the option to hide a single post or opt to see fewer posts from a specific person, page, or group.<sup>47</sup> Instagram offers users a "not interested" button they can use to filter out content with certain keywords from

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<sup>43</sup> Meta, *Suicide and Self-Injury*, <https://transparency.fb.com/data/community-standards-enforcement/suicide-and-self-injury/facebook/>.

<sup>44</sup> Meta, *Counting Strikes*, <https://transparency.fb.com/enforcement/taking-action/counting-strikes/>.

<sup>45</sup> Meta, *Restricting Accounts*, <https://transparency.fb.com/enforcement/taking-action/restricting-accounts/>.

<sup>46</sup> Meta, *Disabling Accounts*, <https://transparency.fb.com/enforcement/taking-action/disabling-accounts/>.

<sup>47</sup> Meta, *How Can I Control What I See in Feed on Facebook*, <https://www.facebook.com/help/1913802218945435>.

their suggested posts.<sup>48</sup> Meta has rolled out other features in response to feedback, such as the ability to turn off a counter displaying how many people have “liked” a post or photo.

42. ***Safety-Related Information, Resources, and Partnerships.*** Meta provides a Safety Center<sup>49</sup> that offers expert-backed safety resources, tools, and information for users of both Facebook and Instagram. These include resources and information related to suicide prevention,<sup>50</sup> maintaining mental health and well-being,<sup>51</sup> preventing bullying and harassment,<sup>52</sup> as well as resources and information of particular interest to parents,<sup>53</sup> educators,<sup>54</sup> journalists, activists, and public figures.<sup>55</sup> The Safety Center’s Parent Portal, Youth Portal, and Child Safety Hub are focused on fostering conversations around online safety, security, and well-being. The Safety Center has a dedicated crisis support resources page to help users quickly obtain expert support to address suicide prevention, eating disorders, domestic violence, and child protection.<sup>56</sup>

43. Meta regularly publishes updates about its efforts to remove harmful content and protect user communities. For example, Meta has published articles on how it uses artificial

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<sup>48</sup> Meta, *Hide a Post You Don’t Like in Instagram Search and Explore*, <https://help.instagram.com/1105548539497125>.

<sup>49</sup> Meta, *Safety Center*, <https://about.meta.com/actions/safety/>.

<sup>50</sup> Meta, *Suicide Prevention*, <https://about.meta.com/actions/safety/topics/wellbeing/suicideprevention/>.

<sup>51</sup> Meta, *Well-Being*, <https://about.meta.com/actions/safety/topics/wellbeing/>.

<sup>52</sup> Meta, *Bullying and Harassment*, <https://about.meta.com/actions/safety/topics/bullying-harassment/>.

<sup>53</sup> Meta, *Child Safety*, <https://about.meta.com/actions/safety/audiences/childsafety/>.

<sup>54</sup> *Id.*

<sup>55</sup> Meta, *Journalists, Activists, and Public Figures*, <https://about.meta.com/actions/safety/audiences/journalists-activists-public-figures/>.

<sup>56</sup> Meta, *Crisis Support Resources*, <https://about.meta.com/actions/safety/crisis-support-resources/>.

intelligence on Facebook to help suicide prevention efforts,<sup>57</sup> on Meta's efforts to protect people on Instagram from abuse by enabling automatic filtering of harmful comments and message requests,<sup>58</sup> on Meta's partnership with the National Center for Missing and Exploited Children (NCMEC) in the development of Take It Down,<sup>59</sup> and on the more than 30 tools Meta has developed to support teens and families on its apps—including parental controls, age verification technology, and tools that protect teens against unwanted interactions.<sup>60</sup>

44. Meta collaborates with a number of partners and experts to inform its approach to safety, including the Boys and Girls Club of America, Childhelp, ConnectSafely, The Child Mind Institute, the Cyber Civil Rights Initiative, the International Bullying Prevention Association, Pacer's National Bullying Prevention Center, the Yale Center for Emotional Intelligence, and the NCMEC.<sup>61</sup> For example, Meta worked with the Child Mind Institute and ConnectSafely to publish a Parent's Guide<sup>62</sup> with the latest Instagram safety tools and privacy settings and a list of tips and conversation starters to help parents and guardians navigate discussions with their teens about their online presence. Meta also worked with the Digital Wellness Lab team on a Family Digital Wellness Guide to help families learn about media-related health issues. Facebook and Instagram

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<sup>57</sup> Meta, *How Facebook AI Helps Suicide Prevention* (Sept. 10, 2018), available at <https://about.fb.com/news/2018/09/inside-feed-suicide-prevention-and-ai/>.

<sup>58</sup> Meta, *Protecting People on Instagram from Abuse* (Oct. 20, 2022), available at <https://about.fb.com/news/2022/10/protecting-people-on-instagram-from-abuse/>.

<sup>59</sup> Meta, *New Updates to Help Prevent the Spread of Young People's Intimate Images Online* (Feb. 27, 2023), available at <https://about.fb.com/news/2023/02/helping-prevent-the-spread-of-young-peoples-intimate-images-online/>.

<sup>60</sup> Meta, *Providing Safe Experiences for Teens* (Jan. 9, 2023), available at <https://about.fb.com/news/2023/01/providing-safe-experiences-for-teens/>.

<sup>61</sup> Meta, *Safety Partners*, <https://about.meta.com/actions/safety/safety-partners/>.

<sup>62</sup> Meta, *Helping Your Teen Navigate Instagram Safely*, <https://about.instagram.com/community/parents>.

are founding members of Take It Down, a new service designed to proactively prevent young people's inappropriate intimate images from spreading online. Meta partnered with the NCMEC in the development of Take It Down.

**S.B. 396's Impact on Facebook and Instagram**

45. I understand that on or around April 11, 2023, the State of Arkansas enacted S.B. 396 (the "Act"), which is set to go into effect on September 1, 2023. *See* S.B. 396, §1 (to be codified at §4-88-1103(b)(1)-(2)). I understand that both Facebook and Instagram are "social media platforms" with users in Arkansas, as defined by the Act at §4-88-1101(8)(A). I understand that Facebook and Instagram will be subject to the Act, as neither service appears to fall within any of the exceptions listed in the Act at §4-88-1101.

46. I understand that the Act's restrictions will only apply to certain in-scope services associated with only certain large companies. Teens move fluidly across online services and Facebook and Instagram are only one part of the online ecosystem. We can most effectively protect youth if the whole industry works together to achieve this goal. As a general matter, narrowing the responsibility of youth safety to only a few large companies can lead to a new marketplace for unmonitored services with no incentive to build new safeguards.

47. I understand that, pursuant to the Act, Arkansas account holders who do not wish to go through the Act's mandated age-verification processes—or minor users who are not able to prove express parental consent to use Facebook or Instagram—will not be permitted to access Facebook or Instagram.

48. I understand that many people do not always have access to the forms of identification that can make verifying age clear, and that other people may find age-verification processes cumbersome. I understand that lack of identification access disproportionately impacts

underserved communities around the world, particularly young women. I also understand that some people may be uncomfortable sharing identification.

49. I understand that the Act's restrictions could deter numerous would-be users of Facebook or Instagram from accessing the services. I understand that such persons, as a result, will not be able to use Facebook or Instagram to make social connections; showcase their creative talents; gather information about businesses, sports teams, and the world around them; engage with educational material; receive voter registration information; participate in political discourse (including with other users or even directly with political candidates); or engage in any number of other potential uses of these services.

50. The Act may also require substantial and burdensome changes to the design and operation of the Facebook and Instagram services. I will describe some examples below.

51. I understand that the Act may require Meta, for the Facebook and Instagram services, to design and build a new account registration process for new Arkansas account holders who seek to access those services. I understand that creating this new account registration process on Facebook and Instagram may be necessary to comply with the Act's mandated age and parental consent verification procedures. I understand that Meta may need to dedicate multiple months of its engineers' time to this effort. I further understand that the Act may require Meta to pay a "third party vendor" to perform these verification services on Facebook and Instagram across, potentially, millions of new users over time.

52. I understand that these design burdens are significant enough that Meta may not be able to implement these processes for Facebook and Instagram prior to the September 1, 2023, effective date of the Act. In order to avoid civil or criminal penalties under the Act, I understand that Meta may need to restrict *all* new potential users in Arkansas from creating accounts on



Facebook or Instagram beginning September 1, 2023, and that this restriction could be in place until Meta can successfully implement processes for new Arkansas account holders to be able to register and access the Facebook and Instagram services in compliance with the Act.

53. In short, if the Act's restrictions go into effect, they will, among other things, reduce users' ability to access, connect with, and disseminate speech with their friends, family, and candidates for political office on Facebook and Instagram; will reduce users' access to information about the democratic process, including voting and registration information; and may force Meta to dedicate numerous personnel to dramatically overhaul the Facebook and Instagram account registration processes for new Arkansas users.

\* \* \*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 30, 2023

DocuSigned by:  
*Antigone Davis*  
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By: \_\_\_\_\_

Antigone Davis

**EXHIBIT C**

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

**NETCHOICE, LLC**

**PLAINTIFF**

**v.**

**CASE NO. 5:23-CV-05105-TLB**

**TIM GRIFFIN, in his Official Capacity  
as Attorney General of Arkansas**

**DEFENDANT**

**DECLARATION OF DAVID BOYLE**

I, David Boyle, hereby declare as follows:

1. I am over 18 years of age and am competent in all respects to make this Declaration.

I possess personal, firsthand knowledge of the assertions made herein.

2. I am currently employed as Senior Director, Product at Snap Inc. (“Snap”). I have held this role since 2018. I make this declaration based on personal knowledge including information and belief obtained from performing my job duties in the ordinary course of business.

3. Snap’s flagship application is Snapchat, a camera and communications service that allows users to communicate with friends and family using text, audio and video calls, photos, and short videos. Snapchat is typically used for direct, private communications between small groups of people who already know each other in real life. By default friendship on Snapchat is “bidirectional,” meaning that someone has to accept you as a friend in order to communicate with you.

4. Snapchat opens to the user’s camera and allows the user to send texts and images (called “Snaps”) that delete by default after being opened. This default ephemerality feature is designed to mirror real-life interactions. It affords users a digital way to show a more authentic, unpolished, and spontaneous side of themselves. Snapchat also offers users a variety of tools to add effects to their photos, such as adding puppy dog ears to a face or augmented reality effects

on a landmark (like rainbows coming out of the Eiffel tower). Since October 2013, users have been able to compile photos and videos into “Stories” generally available for 24 hours which, by default, are viewable only by a user’s friends. Through Snapchat’s “Discover” feature, users also have access to vetted content from trusted partners (e.g., NBC News). Snap also more recently introduced “Spotlight,” a feature that allows users to make videos that anyone can view. Over 383 million people use Snapchat every day to communicate with friends and stay in touch.

5. When creating an account on Snapchat, users are required to disclose their date of birth, as well as to provide either an email address or phone number. Users under age 13 are not allowed to create an account. If Snap learns that a user is under 13, it takes action to terminate the account.

6. Snapchat takes numerous precautions to protect minors (age 13-17) who use the service. For example, by default, profiles for users under 18 are private and teens can only receive messages from users with whom they are already friends on the platform or already have in their phone’s contacts. Snapchat empowers users to report harmful images or videos, and it employs technology to identify known illegal images and videos of child sexual abuse materials, which it then reports to the relevant authority. Snapchat also takes steps to safeguard the mental health of its users. For instance, in 2020, Snap launched Here For You, which surfaces resources from expert organizations to Snapchat users when they search for a range of mental-health related topics.

7. In addition, Snap offers parents insight into their teens’ use of the platform. Through Snapchat’s Family Center, a parent or guardian can install Snapchat on their phone and then link to the minor’s account to see which friends the teen is communicating with on Snapchat. Family Center is designed to mirror the oversight that parents have over their teens’ actions in real life. For instance, parents typically know who their teen spends time with in-person, but they

typically do not hear all the in-person conversations that their teens have with their friends. Similarly, Family Center does not show parents the substance of teens' communications on Snapchat.

8. Snap does not believe that SB 396 applies to Snapchat, as Snapchat's predominant purpose is as a direct messaging service. But one of the bill's co-sponsors, Senator Tyler Dees, specifically stated that the bill is intended to target Snapchat. *See* Brian Fung, *Arkansas Governor Signs Sweeping Bill Imposing a Minimum Age Limit for Social Media Usage*, CNN.com (Apr. 12, 2023), <https://www.cnn.com/2023/04/12/tech/arkansas-social-media-age-limit/index.html>. Snap therefore faces a significant risk of litigation if it does not comply with SB 396's age-verification and parental consent requirements. And even if Snap attempts to comply with these requirements, it may still face lawsuits over alleged noncompliance.

9. SB 396's timeline for compliance is unusually quick, particularly because it requires companies to "use a third party vendor" to perform age verification. Were Snap required to comply with these requirements, the timeline provided (only a few months) may not even leave enough time to verify that any third-party vendor is capable of complying with Snap's privacy and data security requirements. Snap takes its privacy and data security requirements very seriously. There are limited vendors who meet our requirements and can handle our scale of users.

10. If the law were to apply to Snap, SB 396 also would place Snap in a Catch-22 with respect to the retention of user information. It would be infeasible to operate age-verification and parental-consent systems without retaining information about individuals who seek to access Snapchat, so as to (1) facilitate future access to Snapchat by individuals who prove that they are 18 years old or have parental consent, and (2) block individuals under 18 who do not have parental consent. It would also be important to retain such information to prove compliance with the law.

But SB 396 expressly prohibits any “commercial entity,” including a “third party vendor,” from “retain[ing] any identifying information of an individual after access to the social media platform has been granted.” *See* SB 396, §1 (to be codified at Ark. Code §4-88-1104). Thus, it appears practically impossible for Snap to comply with the law’s age-verification and parental-consent requirements while simultaneously complying with its restrictions on the retention of users’ identifying information.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of July, 2023.

Jul 5, 2023

DocuSigned by:  
  
3009007F7A0E40F...  
\_\_\_\_\_  
David Boyle

**EXHIBIT D**

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

**NETCHOICE, LLC**

**PLAINTIFF**

**v.**

**CASE NO. 5:23-CV-05105-TLB**

**TIM GRIFFIN, in his Official Capacity  
as Attorney General of Arkansas**

**DEFENDANT**

**NEXTDOOR DECLARATION IN SUPPORT OF  
PRE-ENFORCEMENT CHALLENGE TO ARKANSAS SENATE BILL 396**

I, Justyn Harriman, hereby declare as follows:

1. I am over 18 years of age and am competent in all respects to make this Declaration. I possess personal, firsthand knowledge of the assertions made herein.

**Background information on Nextdoor & Nextdoor Users**

2. I serve as the Senior Engineering Manager for Trust & Safety and Verification at Nextdoor. I have worked at Nextdoor for nearly 8 years, and founded the fraud, misinformation, and safety framework at Nextdoor. I oversee Nextdoor's verification framework, including the testing and implementation of new verification methods. I also have experience launching multiple new international markets for Nextdoor.

3. Nextdoor operates [www.nextdoor.com](http://www.nextdoor.com) and the Nextdoor app, a platform where neighbors around the world turn daily to receive trusted information, give and get help, get things done, and build real-world connections with those nearby — neighbors, 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, over 80 million verified users (hereafter, "users") rely on Nextdoor in more than



305,000 neighborhoods across 11 countries. In the US, 1 in 3 households uses the network. Nextdoor is in 26% of households in Arkansas.

4. On Nextdoor, users are placed in a neighborhood based on their address and automatically receive updates from nearby neighbors, businesses, and public services.

5. 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**

6. Nextdoor verifies that each individual signing up on Nextdoor is a real person (as opposed to an Internet “bot”) with a tie to a real address. 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 and they cannot be verified with a phone call or text, 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). Alternatively, individuals may remain unverified (hereafter, “unverified users”), with limited functionality.

7. 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 must 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 moments of friction aimed at slowing people down and combating bias. In 2022, users who received the reminder edited or withheld their post 36% of the time (up from 35% in 2021).
  - c. **Feed Choice:** Nextdoor 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.
8. 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.
9. There are three main categories of guideline-violating content:
- a. **Harmful:** Content that Nextdoor considers fraudulent or unsafe, e.g., violent or graphic, or illegal content.
  - b. **Hurtful:** Content that users consider uncivil, e.g., insults, rudeness, name-calling.

- c. **Other:** Non-local content, spam, content posted in error.
10. 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 neighbors involved.
11. We work regularly with leading experts including our Neighborhood Vitality Advisory Board<sup>1</sup> 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.
12. Our annual transparency report discusses metrics around reported content from the year prior. In our recent report, published in February 2023<sup>2</sup>, we disclose that in 2022:
- a. The subset of content reported for being harmful was reduced to 0.2% of total user-generated content, a 35% reduction from 2021.
  - b. Nextdoor made only 1 cybertip report of suspected child sexual abuse material to National Center for Missing and Exploited Children.

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<sup>1</sup> <<https://about.nextdoor.com/advisory-boards/#vitality>>

<sup>2</sup> <[https://help.nextdoor.com/s/article/Nextdoor-Transparency-Report-2022?language=en\\_US](https://help.nextdoor.com/s/article/Nextdoor-Transparency-Report-2022?language=en_US)>

- c. Nextdoor's 210,900 volunteer community moderators reviewed 92% of all reported content (1.7% of all pieces of content), and removed 57% of reported content in a median time of 5.1 hours. The remaining reported content was reviewed by paid Nextdoor Operations staff or automatically removed.

### **Teenagers on Nextdoor**

13. Nextdoor's Member Agreement requires minors to be 13 years old or older in the United States to join Nextdoor.<sup>3</sup>

14. Nextdoor estimates that approximately 99% of its users are legal adults. Further, only approximately 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.

15. The overarching utility offered by Nextdoor does not, by nature, appeal to minors. Nextdoor lacks games, cartoonish elements, child-oriented music or activities, child celebrities or celebrities who appeal to children, and is not advertised to children. It is used overwhelmingly by legal adults who are looking to connect with other nearby residents. 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

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<sup>3</sup> <[https://help.nextdoor.com/s/article/Nextdoor-Member-Agreement?language=en\\_US](https://help.nextdoor.com/s/article/Nextdoor-Member-Agreement?language=en_US)>

offering technical computer assistance to neighbors, including a class on how to use the latest generative Artificial Intelligence technology.

### **Challenges of Arkansas Senate Bill 396**

#### *Cost of Document-based Verification*

16. While Nextdoor has not attempted to require identity-based age verification, Nextdoor does use identity-based verification in two other circumstances. Both circumstances place a significant burden on Nextdoor and its users.

17. 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.

18. 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.

19. These reports are relatively rare. However, if Nextdoor Support agents were required to process identity documentation, for every new Arkansas user, Support agent costs would increase by approximately \$100,000-200,000 per year (assuming no growth in the number of Arkansas users joining).

20. Second, Nextdoor offers *business* verification to users who have claimed business pages. From 2020-2022, in order to be a verified business, the business operator needed to contact Nextdoor using a phone number or email address that matched an external

database, or submit documentation showing the existence of the business and its address (such as a business permit, tax notice, or bank statement). Verified businesses benefited from increased ability to post to neighborhoods and badging on the platform to indicate the business was verified, and other features.

21. During this time period, only 7% of claimed businesses obtained verification, approximately 77% of whom did so through documentation.

22. Because businesses are public-facing entities with the potential to earn revenue from engaging on Nextdoor, we would expect fewer businesses to have concerns, such as privacy concerns, about submitting documentation for verification purposes, as compared to individual consumers. Further, because verification helps protect businesses against false claims by others on their business pages, and verified businesses gained additional features unavailable to unverified businesses, such as the ability to offer gift cards, we would expect that business operators had motivation to verify their businesses. Nevertheless, we found that requiring documentation or matching to an external database presented a substantial barrier to businesses and prevented many businesses from becoming verified.

23. In 2022, based on considerations of these barriers, Nextdoor attempted to simplify and automate the verification process, introducing a tiered verification process. This updated process allowed many businesses to access some additional features through an automated risk assessment process similar to the process Nextdoor uses for individuals. By taking these measures, including reducing document-based verification, Nextdoor saw a 10-fold increase in successful business verification.

24. Nextdoor still processes document-based verification for some businesses at a cost of approximately \$2.50 per case.

25. Third party verification of documents has been even less successful. 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 additional individuals verified using this method, and Nextdoor discontinued the experiment.

*Experiments and Challenges with Collecting Age*

26. Nextdoor conducted testing and found that users are reluctant to provide their date of birth; in fact, only 10-20% of users were willing to share their date of birth on a voluntary basis.

27. If date of birth were required from prospective users, we would expect a significant number of prospective users to decline to join the platform. If date of birth 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.

28. 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.
  - 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 carries IDs around constantly. If an ID is not within easy reach, an individual may find verification too much work to continue. Further, collecting ID from users using a desktop Web (more than half of new Nextdoor users) presents a unique challenge: many desktop users do not have webcams attached to their computers and would not have an easy way to capture a government ID, even if it was within easy reach. And even if a prospective or current user does have ID within reach and is on a mobile device, the prospective or current user may be in a location where they do not feel comfortable pulling out and setting down their ID to photograph, such as on a public street.
29. 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 integration, which could lead to additional user



frustration. If there were an error or other problem, Nextdoor Support agents may not directly have the information to help the user resolve the issue.

*Time & Cost Associated with Implementing the Verification Process Described in SB 396*

30. Should the Arkansas law go into effect and apply to Nextdoor, Nextdoor would suffer immediate and irreparable harm to its business.

31. *Time:* It would take Nextdoor at least six months of work to implement a third-party verification process. Nextdoor would be unable to implement this by the September 1, 2023, effective date.

32. *Cost*

- a. Nextdoor has thus far developed an effective verification system that balances trust with friction and cost of onboarding new users.
- b. Nextdoor has researched partnering with a third party for ID-verification, and received information from the third party that the cost per user verification would increase by up to 3000% (from \$0.03-0.05 per user registration attempt to between \$0.75-1.50 per user registration attempt).
- c. In Nextdoor's Shareholder Letter for Q1 2023, Nextdoor disclosed that its global average revenue per weekly active user was \$1.17.
- d. A smaller and still growing platform like Nextdoor has less revenue per user and is less able to take advantage of economies of scale. Age verification is likely to be far more costly for Nextdoor versus a bigger mature platform, both on a relative and an absolute basis.

- e. If Nextdoor were required to use a third-party verification system to verify the ages of all Arkansas-based users, the per-user costs of implementing and maintaining such a system would significantly impact our per user profitability.
33. State-by-state regulations, like SB 396, only compound the implementation costs listed above.
34. Based on Nextdoor's experiences with document-based verification, third party verification, and age data collection, it expects the percentage of users able and willing to complete Arkansas mandated third-party verification process to be dismally low, so low that Arkansas may be an unviable market for two reasons.
- a. One, the above-listed costs would dwarf possible revenue on a per-user basis, making the Arkansas market as a whole cost-prohibitive.
  - b. Two, Nextdoor thrives on local neighbors 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.

*Access to Nextdoor's Visitor Website*

35. Starting in 2020, Nextdoor permitted users to make some content visible off platform to unregistered users (hereafter, "visitors") and unverified users. However, in

order to engage with the content or with other neighbors, unverified users or visitors must register, login with Nextdoor, and pass verification. Visitors have only limited ability to read some content, including some posts, such as recommendations for local businesses or an announcement about an art festival in the park, and to see some information about features available in their neighborhood, such as the existence of an “Avid Gardeners” group. The interface for persons who are not logged into Nextdoor (hereinafter “Visitor Website”) does not show the full names of posters, and does not include any mechanism for unverified users and visitors to communicate with each other or users. In this respect, the Visitor Website is more similar to a static, rather than interactive, website. Similarly unverified users have access to only limited features rather than the full suite of interactivity.

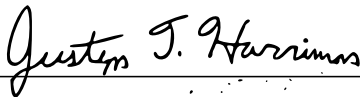
36. The Arkansas law is unclear as to how it would apply to visitors. As a whole, a substantial function of Nextdoor is to connect users in order to allow those users to interact socially with each other within Nextdoor. However, connection and interaction are not functions of the Visitor Website. It is thus unclear whether Nextdoor’s Visitor Website qualifies as a “social media platform” and whether the Arkansas law would obligate Nextdoor to verify the age of all visitors to the Visitor Website.

37. Verifying the age of all visitors of the Visitor Website would be impossible. First, while Nextdoor collects addresses for registered account holders, and therefore knows which account holders declared themselves to be residents of Arkansas, Nextdoor cannot know where unlogged-in visitors are located.

38. While IP addresses can be used as a proxy for approximating geographic location, it is an imperfect proxy and by no means 100% accurate. Nevertheless, if the Arkansas law were to apply to Nextdoor's Visitor Website, the only method with which Nextdoor could attempt to comply would be to block IP addresses estimated to be geolocated in Arkansas from accessing the Visitor Website entirely.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of July, 2023.

  
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Justyn Harriman