

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

NETCHOICE,

Plaintiff,

v.

JONATHAN SKRMETTI, in his official
capacity as the Tennessee Attorney General &
Reporter,

Defendant.

Civil Action No. 3:24-cv-01191

**PLAINTIFF NETCHOICE’S MOTION FOR TEMPORARY RESTRAINING ORDER
AND RENEWED MOTION FOR PRELIMINARY INJUNCTION**

Tennessee House Bill 1891 (“Act”) unconstitutionally impedes adults and minors’ access to vast amounts of constitutionally protected online speech. As the attached memorandum of law explains, the First Amendment prohibits the Act’s requirements for a content-based and speaker-based collection of covered websites to verify the ages of their users and for minors to secure parental consent before accessing the covered websites.

NetChoice requests a **temporary restraining order as soon as possible** to prevent the ongoing irreparable harm that NetChoice members have been suffering since before the Act took effect January 1, 2025. A temporary restraining order will allow the court time to consider NetChoice’s still-pending motion for a preliminary injunction, to hold a hearing (if that is useful to the Court), and grant NetChoice’s motion.

NetChoice moved for a preliminary injunction on October 3, 2024, asking for relief before the Act took effect on January 1, 2025. ECF 8-9.¹ On October 11, 2024, the parties filed a joint

¹ For additional context, NetChoice sought and obtained injunctions against multiple state laws restricting access to online speech last year. NetChoice challenged Mississippi’s law first

motion for scheduling order “to ensure that the parties have sufficient time to brief the issues raised by Plaintiff’s motion—and that the Court has ample time to decide the motion before the Act’s effective date.” ECF 20 at 1. NetChoice adhered to that briefing schedule, filing its reply on November 19, 2024—one day early on the briefing schedule and nearly a month and a half before the Act went into effect. *See* ECF 35. NetChoice’s motion has been fully briefed since November 19, 2024—with the parties filing multiple notices of supplemental authority since then. *See* ECF 8, 9, 26, 34, 35, 37, 40, 41, 42-43, 45.

The Court did not decide that motion by January 1, 2025. On January 2, 2025, NetChoice filed a motion to ascertain status on its motion for a preliminary injunction. ECF 42. On January 3, 2025, the Court set a status conference for January 8. ECF 44. At the status conference, Chief Judge Campbell announced that he held stock in one of NetChoice’s members (Meta) at the time NetChoice filed its suit and motion for a preliminary injunction. At some point before January 8,

because it took effect July 1, 2024. Complaint, *NetChoice, LLC v. Fitch*, 1:24-cv-00170-HSO-BWR, 2024 WL 3276409 (June 7, 2024). The court enjoined enforcement of Mississippi’s law on July 1, 2024. *Fitch*, 2024 WL 3276409 (S.D. Miss. July 1, 2024). NetChoice then challenged Texas’s law that took effect September 1, 2024. Complaint, *Comput. & Comm’n Indus. Ass’n v. Paxton*, No. 1:24-cv-00849-RP, 2024 WL 4051786 (W.D. Tex. July 30, 2024) (“*CCLA*”). The court enjoined enforcement of Texas’s law on August 30, 2024. *CCLA*, 2024 WL 4051786 (W.D. Tex. Aug. 30, 2024). Throughout this same time period, NetChoice was also litigating a challenge to Utah’s law that was initially enacted in 2023 but amended in 2024 with an effective date of October 1, 2024. *See* Amended Complaint, *NetChoice, LLC v. Reyes*, No.2:23-cv-00911-RJS-CMR, 2024 WL 4135626 (D. Utah May 3, 2024). After holding a motions hearing in August, the court enjoined enforcement of Utah’s law on September 10, 2024. *Reyes*, 2024 WL 4135626 (D. Utah Sept. 10, 2024). NetChoice then filed the instant challenge against Tennessee HB 1891, ECF 1 (Oct. 3, 2024), and a challenge against California’s law, Complaint, *NetChoice v. Bonta*, No. 5:24-cv-07885-EJD (N.D. Cal. Nov. 12, 2024), because both laws had a January 1, 2025 effective date. After holding a motions hearing on December 17, 2024, the court in *Bonta* enjoined enforcement of the California law in part on December 31, 2024, *Bonta*, 2024 WL 5264045 (N.D. Cal. Dec. 31, 2024), and subsequently issued an order enjoining enforcement of the other provisions of law pending appeal for thirty days on January 2, 2025, *see also Bonta*, 2025 WL 28610 (N.D. Cal. Jan. 1, 2025). In this case, however, no action has been taken, despite the fact that the Act went into effect on January 1, 2025.

2025, Chief Judge Campbell sold that stock. The clerk’s office followed this court’s procedure in the event of a waivable conflict. Chief Judge Campbell recused himself on January 15, 2025. ECF 47. On January 16, the Clerk’s office reassigned this case. The Act has been in effect and enforceable for 16 days.

As Plaintiff has explained, the Act empowers Defendant to seek penalties including a “civil penalty of not more than one thousand dollars (\$1,000) *for each violation*,” costs, expenses, and attorney’s fees. ECF 9 at 8 (emphasis added; quoting Tenn. Code § 47-18-108(b)(3)). Since January 1, 2025, covered websites could potentially be liable for \$1,000 for every user in Tennessee who creates an account without having to verify their age and every minor user that creates an account without receiving parental consent. *See* Tenn. Code § 47-18-5703(a). To avoid those penalties, NetChoice members would have to incur substantial compliance costs to implement the Act’s requirements. *See* ECF 9 at 24. In either event, penalties or compliance costs incurred would be unrecoverable due to the State’s sovereign immunity. *Id.* at 25.

NetChoice’s members and their users also are facing the irreparable “loss of [their] First Amendment Freedoms.” *Id.* at 24-25 (quoting *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020)). For example, NetChoice’s member Nextdoor stated in its declaration that were the Act “to go into effect, Nextdoor expects that it would have to bar users under 18 from use of our platform.” Pai Decl., ECF 8-3 ¶ 37. On January 1, Nextdoor did just that: “[I]ndividuals who are under the age of 18 are not permitted to create an account . . . starting on January 1, 2025, if they are residents of the State of Tennessee.” *See* NextDoor, Member Agreement (Dec. 31, 2024), <https://tinyurl.com/9ftfhr83>. Thus, as of January 1, Nextdoor has lost—and will continue to lose—its First Amendment right to curate and disseminate speech to minors in Tennessee looking to engage with neighbors to get a babysitting job, find a lost pet, or participate in neighborhood

activities. And minors in Tennessee correspondingly are losing and will continue to lose their First Amendment right to speak and receive speech on Nextdoor. Even then, Defendant has said that Nextdoor “doesn’t comply with the Act: It doesn’t implement a process to ‘verify the age’ of new account holders.” ECF 43 at 1. As for NetChoice’s other regulated members, Defendant says “they are not complying.” ECF 43 at 2. So all NetChoice members are at risk of enforcement actions.

NetChoice asked Defendant to agree to stay enforcement of the Act against NetChoice’s members while NetChoice’s Motion for Preliminary Injunction, ECF 8-9, is pending, but Defendant has refused to agree to stay enforcement, ECF 43 at 2.

For these reasons, NetChoice’s members need immediate relief temporarily restraining Defendant from enforcing the unconstitutional Act against them while the Court considers NetChoice’s pending Motion for Preliminary Injunction. ECF 8-9. The attached memorandum is nearly identical to the memorandum that NetChoice filed on October 3, 2025, with updated citations, the temporary restraining order standard, information about Nextdoor, and minor non-substantive wording changes.

WHEREFORE, for the reasons stated herein and in the concurrently submitted memorandum of law, Plaintiff NetChoice respectfully requests immediate entry of a temporary restraining order. Plaintiff NetChoice also renews its request for a preliminary injunction prohibiting Defendant from enforcing the Act against NetChoice’s covered members, and such other and further relief the Court deems necessary and proper.

Dated: January 16, 2025

Respectfully submitted,

/s/ Steven P. Lehotsky

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically via the Court's CM/ECF system, causing electronic service upon the following on this the 16th day of January, 2025:

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