IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NETCHOICE,	*	
Plaintiff,	*	
v.	*	No. 1:25-cv-00322-RDB
ANTHONY G. BROWN, ET AL.,	*	
Defendants.	*	

* * * * * * * * * * * *

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS AMENDED COMPLAINT

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ARGUMENT

I. NETCHOICE HAS NOT ESTABLISHED THAT IT HAS STANDING.

NetChoice argues that it has associational standing to raise the as-applied challenges it brings because some of its members are regulated by the Kids Code. (ECF 40 at 43-44 (citing two D.C. Circuit cases).) But an association must do more than simply show that it is regulated under a law in order to have standing: it must show that its members have suffered an injury-in-fact.

NetChoice cannot satisfy the first *Hunt* factor, requiring that "its members would otherwise have standing to sue in their own right," because it has not sufficiently alleged that its members have suffered a First Amendment injury. *See Hunt v. Washington Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). As explained in Defendants' opening brief, NetChoice makes only conclusory and unsupported allegations that its members "curate and disseminate compilations of protected speech." (ECF 35-1, at 8-12.) This Court need not credit "naked assertions devoid of further factual enhancement," *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2007) (quotation marks omitted), or "legal conclusions couched as facts," *Wag More Dogs, LLC v. Cozart*, 680 F.3d 359, 365 (4th Cir. 2012) (citation omitted). NetChoice argues that "such curation is not a prerequisite of standing." (ECF 40 at 44.) But it is here, because NetChoice premises its First Amendment arguments on its members' use of personalized feeds.[1] If, in the first instance, those feeds are not protected speech, NetChoice's members cannot have suffered First Amendment harm even if those feeds are impacted by the Kids Code. *See Moody v. NetChoice, LLC*, 603 U.S. 707, 716 (2024); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (in order to state a claim, "a plaintiff

[1] NetChoice's Amended Complaint focuses on personalized feeds, both in its allegations as to how its members engage in protected First Amendment activity, and in its insistence that the "data restrictions" imposed by the Kids Code impact the members' ability to provide personalized feeds. (*See generally* ECF 27; ECF 27 ¶¶ 253-56; ECF 40, at 25-26.) Even when discussing the law's impacts on specific functions such as "friending," "following," and dark patterns, NetChoice focuses on the impact on users' personalized feeds. (*See* ECF 40, at 26-27 (discussing friending and following); ECF 40, at 28 (referencing "autoplay" and "newsfeed" features).)

must have suffered an 'injury in fact,' an "actual or imminent" "concrete and particularized" "invasion of a legally protected interest").

While the non-First Amendment cases NetChoice cites indicate that a regulated entity generally "has standing to challenge a law under which it is regulated" (ECF 40, at 44 (brackets and quotation marks omitted)), the cases do not support its proposition that a regulated entity may bring a First Amendment challenge without showing that protected speech has in fact been burdened. In those cases, the plaintiffs had standing because they suffered an immediate and direct impact of the challenged regulations.[2] Although that is NetChoice's contention here too, because NetChoice brings claims under the First Amendment, it must first show that its members engage in protected speech. *See, e.g.*, *Moody*, 603 at 725-26; *Benham v. City of Charlotte*, 635 F.3d 129, 136 (4th Cir. 2011) (plaintiffs lacked standing to challenge denial of a permit because permit was not necessary for plaintiffs to engage in all protected speech activities they wanted to engage in and, accordingly, no protected speech or expression was impacted).[3]

Even if the amended complaint alleges that there is some potential First Amendment injury to some of NetChoice's members because their ability to curate personal feeds or moderate content is impacted, NetChoice never connects the dots to explain how the Kids Code actually impacts the protected messages that its members wish to express. (*See* ECF 35-1, at 15.) Accordingly, even if NetChoice has sufficiently alleged that some members engage in some protected speech, NetChoice has failed to allege that the Kids Code impacts those members' expressive decisions or

[2] *See Wynnewood Refin. Co. v. Environmental Prot. Agency*, 77 F.4th 767, 777-78 (D.C. Cir. 2023) (company suffered immediate and direct financial impact by compressed compliance timeframe); *Corbett v. Transportation Sec. Admin.*, 19 F.4th 478, 484 (D.C. Cir. 2021) ("frequent flyer" forced to "make significant changes" to his travel practices or face penalty).

[3] *See also American Civil Liberties Union Found. of S.C. v. Stirling*, 123 F.4th 170, 174 (4th Cir. 2024) (noting in context of dismissal for failure to state a claim that a plaintiff "bears the initial burden to demonstrate that the First Amendment even applies." (quotation marks omitted)).

otherwise results in actual injury-in-fact. Therefore, NetChoice has failed to allege standing to assert as-applied challenges to the Kids Code on behalf of its members.

NetChoice also cannot establish associational standing because of the third *Hunt* factor. *Hunt*, 432 U.S. at 343. As Defendants explained, *Moody* will require NetChoice's members to provide detailed, individualized proof to establish that content they publish in social media feeds and other online applications subject to the Kids Code are the product of editorial discretion to which First Amendment protection applies. (*See* ECF 35-1, at 9-11, 15-16 (discussing *Moody*)); *see also NetChoice, LLC v. Paxton*, 121 F.4th 494, 498-500 (5th Cir. 2024) (on remand of *Moody* from the Supreme Court, explaining the factual determinations that must be made by the district court, including as to "'whether there is an intrusion on protected editorial discretion"). NetChoice does not dispute this.[4] Indeed, the Fourth Circuit recently reminded that the need for individualized proof from its members defeats an association's claim of associational standing. *See Association of Am. Railroads v. Hudson*, 144 F.4th 582, 593-95 (4th Cir. 2025) (holding that association lacked standing to pursue members' takings claims).

In the context of its recent holding that federal courts lack equitable authority to issue universal injunctions, the Supreme Court recently emphasized that "the party-specific principles that permeate our understanding of equity" dictate that equitable relief narrowly be granted only to the parties before the court. *See Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2552 (2025). Because associational standing runs contrary to these party-specific principles by allowing nonparties to benefit from relief granted to an association, its application should be limited to cases where the *Hunt* factors are strictly satisfied. Here, the need for individualized proof from NetChoice's

[4] NetChoice argues that the First Amendment issues here can be "answered without reference to the intricacies of each individual platform's operation." (ECF 40, at 44.) But while that may be true in a case regarding age-restrictions on social media platforms, that is not the case here, where the Court will have to assess each platform's functions to determine whether they constitute protected speech. (*See* ECF 35-1, at 18-19.)

members defeats its assertion of association standing as to the as-applied First Amendment claims set forth in the amended complaint.

Next, NetChoice argues that it has standing on behalf of its members' users. (ECF 40, at 44.) While this may be true in a case where a regulation imposes a burden on speech, such as age-gating cases, it is not the case here, where the law does not require removal or "gating" of any speech. *See* Com. Law §§ 14-4810(3), (4). Here, users have no cognizable injury on which to base standing. (ECF 35-1, at 13.)

II. NETCHOICE HAS NOT SUFFICIENTLY PLEADED ITS FACIAL CLAIMS.

To succeed on a facial challenge, a plaintiff must show that the unconstitutional applications outweigh the constitutional. *Moody* confirmed that. And while it is true that *Moody* "addressed the standard to 'win'" facial relief and was not a case about pleading standards (ECF 40, at 31), that does not change the basic principle that in order to plausibly state a claim, a plaintiff must allege "sufficient factual matter," that if "accepted as true" states a "claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (2009). The allegations must offer "more than a sheer possibility" that the statute is unlawful. *See id.*

Courts can and do dismiss complaints that fail to plausibly plead that the unconstitutional applications of a challenged law outweigh the constitutional ones.[5] Likewise the allegations in the amended complaint here, if true, do not provide the Court with a sufficient basis to determine that the unconstitutional applications of the law substantially outweigh the constitutional ones. *See Moody*, 603 U.S. at 724. (*See also* ECF 27 ¶ 63 (conceding that some of NetChoice's members do not intentionally curate their platforms' content).)

[5] *See, e.g.*, *Schiff v. Brown*, No. 1:23-cv-01376-JMC, 2023 WL 8019021, at *3-5 (D. Md. Nov. 20, 2023) (dismissing facial First Amendment claim when plaintiff failed to allege a substantial amount of protected speech was burdened); *Green v. United States Dep't of Justice*, 111 F.4th 81, 100 (D.C. Cir. 2024) (affirming dismissal of facial claim when it is clear a substantial number of applications of the challenged statute are constitutional).

NetChoice cites to *Citizens United v. Federal Election Commission* for the proposition that the facial standard relates to the breadth of remedy, rather than what must be pleaded in the complaint. (ECF 40, at 32 (citing 558 U.S. 310, 331 (2010).) But the question at issue in *Citizens United* was not whether the plaintiff had sufficiently pleaded a facial claim. Instead, the Court assessed whether it could consider a statute's facial validity when only an as-applied challenge was before it and when that as-applied challenge demonstrated the statute's facial invalidity. *See Citizens United*, 558 U.S. at 330-31, 333. Here, NetChoice has failed to sufficiently plead that the Kids Code impermissibly impacts speech across a substantial number of functions of all online services and products that the Kids Code regulates and has brought claims more appropriately suited for as-applied challenges. *See Moody*, 603 U.S. at 724-25 (noting that the parties, by considering only the effects of the challenged laws on content moderation policies, treated their challenges as as-applied challenges instead of facial ones and reminding that a court must determine everything that the law covers in order to evaluate a facial claim). Without more, the pleaded allegations are insufficient to show that a facial remedy is appropriate, and, accordingly, the Supreme Court's focus on remedy rather than pleadings in *Citizens United* is inapposite.

Furthermore, recognizing that "'facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution,'" relevant caselaw supports the proposition that courts, may, in an exercise of judicial restraint, deny sweeping relief when "the course of prudence lies in" awaiting an as-applied challenge, for example, prompted by enforcement of the law in question.[6] *WV Ass'n of Club Owners & Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 300-01 (4th Cir.

[6] NetChoice's citation to a decision reversing a district court's application of the *Pullman* abstention doctrine does not support a contrary conclusion. (*See* ECF 40, at 45 (citing *Sonda v. West Va. Oil & Gas. Conservation Comm'n*, 92 F.4th 213 (4th Cir. 2024).)

2009) (quoting *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 451 (2008)). Characterizing the plaintiff's facial challenge to a statutory restriction on video lottery advertising as a "meat-axe approach," in *Musgrave*, the court explained that such challenge "deprived the court of the contextual underpinning that normally informs judicial consideration of statutory and regulatory applications." *Musgrave*, 553 F.3d at 300. In reversing a district court's grant of a preliminary injunction, the court explained that "prudence, caution, and a respect for the entirety" of a legislative enactment required rejection of plaintiff's facial challenge. *Id*. at 307.

Because political parties' facial challenge to a blanket primary voting system turned on "sheer speculation" of whether nonparty "voters will be confused," in *Washington State Grange*, the Supreme Court determined that the facial challenge "must await an as-applied challenge" in which voters could testify as to whether they were in fact confused. 552 U.S. at 454, 457. Likewise, here, in material part, NetChoice's facial challenge turns on facts obtainable from nonparties—that is, whether content they publish constitutes protected speech and the actual application of the Kids Code to each of their products' features and functions. The Court echoed its concerns regarding the propriety of facial challenges in *Moody*. (*See* ECF 35-1, at 14-17 (discussing *Moody*).) NetChoice's facial claims must be dismissed.

III. THE KIDS CODE DOES NOT REGULATE SPEECH.

A. The Actual Language of the Kids Code Verifies that It Does Not Regulate Speech.

Citing to legislative testimony about "exposure to harmful and age-inappropriate content, cyberbullying, [and] eating disorders" and other extraneous materials, NetChoice asserts that the Kids Code is a regulation of speech. (*See* ECF 40, at 16-17, 22, 26.) While the cited testimony gives context to the General Assembly's desire to regulate online products and services to protect children, the actual text of the Kids Code reveals that the General Assembly did not enact a law to

regulate any particular content, including harmful or age-inappropriate speech. Rather, it enacted a law to regulate what it may permissibly restrict: data-processing practices. Memorializing its intention to regulate only conduct, the General Assembly's legislative enactment expresses that nothing in the Kids Code should disturb First Amendment rights. *See* (ECF 35-1, at 19-21); Com. Law §§ 14-4803(5), 14-4810(3), (4).[7]

NetChoice claims that Defendants "struggle[] to offer a non-speech application of the Act." (ECF 40, at 19.) This is not true. For example, a platform will violate the Kids Code if it profiles a child by default without respect to the aspects of the online product that the child is actively and knowingly engaged with. *Id.* § 14-4806(a)(2). A platform will violate the Kids Code if it collects information about a child's sexuality if that information is not necessary to provide the online product being utilized by the child. *Id.* § 14-4806(a)(3). A platform will violate the Kids Code if it collects data about a child who is not actively using the platform's product. *Id.* A platform will violate the Kids Code if it sells a child's financial data to a known scammer. *Id.* §§ 14-4806(a)(1), (3). A platform will violate the Kids Code if it collects data for the express purpose of offering a personalized product to the child but later sells that data. *Id.* § 14-4806(a)(4). A platform will violate the Kids Code if it collects precise geolocation data at all times, including when such data is not necessary for the platform to provide its online product. *Id.* § 14-4806(a)(5). A platform will violate the Kids Code if it collects precise geolocation data of a child without providing an obvious signal to the child. *Id.* § 14-4806(a)(6). A platform will violate the Kids Code if it employs dark patterns to trick a child into providing data wholly unrelated and unnecessary to the provision of its product. *Id.* § 14-4806(a)(7). A platform will violate the Kids Code if it employs dark

[7] As NetChoice acknowledges, the General Assembly changed the pending Kids Code legislation after it saw the constitutional questions raised by the text of California's law. (*See* ECF 40, at 8-9.)

patterns to circumvent privacy protections. *Id.* A platform will violate the Kids Code if it allows adults to track children's online activities without notifying the children and their parents or guardians. *Id.* § 14-4806(a)(9).

Arguing that the Kids Code is simply a "disguise[d] speech restriction[]" (ECF 40, at 18-19), NetChoice cites to decisions involving laws that (in contrast with the Kids Code) through their plain language, regulate protected speech. *See, e.g.*, *NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1120 (9th Cir. 2024) (California law required entities to evaluate whether their products could "expos[e] children to harmful, or potentially harmful, content"); *Junior Sports Mags. Inc. v. Bonta*, No. 24-4050, 2025 WL 1863184, at *2-3 (9th Cir. July 7, 2025) (California law applied to advertising by firearm manufacturers); *NetChoice, LLC v. Yost, LLC*, 778 F. Supp. 3d 923, 931 (S.D. Ohio 2025), *appeal docketed*, No. 25-3371 (6th Cir. Jan. 5, 2024) (law required certain online platforms to obtain parental consent before allowing access to minors below age sixteen).[8]

NetChoice cites *M.P. ex. rel. Pinckney v. Meta Platforms Inc.*, 127 F.4th 516 (4th Cir. 2025), *petition for cert. filed*, No. 24-1133 (U.S. Apr. 29, 2025) for the proposition that the Kids Code is unconstitutional because it imposes liability based on the content of speech. (ECF 40, at 18.) But, as discussed below, any claimed violation of the Kids Code would not be predicated on the publication of improper content by an online platform. In *Pinckney*, the plaintiffs' claims were premised on a theory that Dylann Roof committed murder because he was exposed to improper racist content. *Pinckney*, 127 F.4th at 521-27. But the Kids Code would not impose liability to a website for hosting racist or otherwise harmful content, exposing children to that content, or for

[8] NetChoice states that the conduct regulated by the Kids Code is covered by the Maryland Online Data Privacy Act ("MODPA"), S.B. 541 (2024), apparently as evidence that the Kids Code must be targeting content instead of conduct. (*See* ECF 40, at 19.) However, MODPA has no bearing on whether the Kids Code is constitutional because a statute "must stand or fall on its own merits, independent of whether it overlaps with other parts of [the] legal landscape." *Recht v. Morrisey*, 32 F.4th 398, 415 (4th Cir. 2022) (citation omitted).

intentionally deciding to favor such content either by prominently posting it to a website's front page or by designing its algorithm to favor that content. (*See generally* ECF 35-1, at 19-21.)

This Court also should not discount the Kids Code's provisions codifying the General Assembly's intent and instructing how the Kids Code must be interpreted. Com. Law §§ 14-4803(5), 14-4810(3), (4). These provisions neither "nullify the 'clear and specific' substantive provisions" of the Kids Code nor constitute mere "boilerplate phrases." (ECF 40, at 31 (citations omitted).) The cases NetChoice cites are inapposite. In *PFLAG, Inc. v. Trump*, the "plain text and stated purpose" of the challenged Executive Orders "evince[d] a clear intent to unlawfully restrict federal funding without Congressional authorization," in violation of the Constitution. 766 F. Supp. 3d 535, 562 (D. Md. 2025). And in *HIAS, Inc. v. Trump*, the Fourth Circuit found that a "purely theoretical savings clause, with no method or standard for invoking it," contradicted and undermined "clear and specific substantive provisions" of the executive order in question. 985 F.3d 30, 325 (4th Cir. 2021). In contrast, because there is no language in the Kids Code requiring an evaluation of content or suggesting that the purpose of the Kids Code is to regulate content, there is nothing for the General Assembly's statements of intent and statutory constriction to contradict.

Furthermore, the provisions are specific and convey more than a boilerplate admonition to follow the Constitution. *See* Com. Law § 14-4803(5) (Kids Code cannot be construed to "require a covered entity to monitor or censor third-party content" or otherwise impact any person's rights); *id.* §§ 14-4810(3), (4) (Kids Code cannot be used to "[p]revent or preclude a child from deliberately or independently searching for or specifically requesting content" or "[r]equire a covered entity to implement an age-gating requirement"); *cf. Wet Sands, Inc. v. Prince George's County*, Nos. MJG-06-2243, MJG-06-2581, 2007 WL 9782594, at *4-5 (D. Md. Apr. 12, 2007) (savings clause

specifying that a restriction in a zoning regulation applies only to "obscenity" "saves the conduct restrictions" of a regulation "from constitutional challenge"). Accordingly, there is no reason to ignore the General Assembly's stated intent and interpretation instructions.

To the extent the Kids Code may nonetheless incidentally burden speech, it does so in a content-neutral manner and, therefore is, at most, subject to intermediate scrutiny. (ECF 35-1 at 33-34.) NetChoice does not challenge Defendants' argument that the Kids Code survives intermediate scrutiny.

B. The Kids Code's "Best Interests of Children" and "Reasonably Likely to be Accessed by Children" Standards Are Not Content- or Speaker-Based.

As discussed in Defendants' opening memorandum, the "best interests of children" standard does not require an evaluation of content. (ECF 35-1, at 26-27.) Nothing in the Kids Code requires the imposition of liability for harmful content: if a covered entity wants to publish or prioritize a message related to "extreme dieting," (ECF 40, at 20), the Kids Code does not stop it from doing so. The "reasonably likely to be accessed by children" standard is similarly not content- or speaker-based. None of the criteria for determining whether a service or product is likely to be accessed by children requires an evaluation of content. *See* Com. Law § 14-4801(s); (ECF 35-1, at 28-29). *First*, a determination of whether a website is "substantially similar to" another website or contains "advertisements marketed to children" does not "demand consideration of the content of other websites and advertisements" in an impermissible way. (ECF 40, at 21-22.) As stated, looking at the content of another website or of an advertisement to determine whether the Kids Code applies does not transform the law into a content-based regulation. *See City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2002).

Second, the fact that other laws or regulations use verbiage that might cause those laws to be content-based (ECF 40, at 22) is irrelevant to Maryland's Kids Code. For example,

§ 14-4801(s) of the Kids Code excludes text that the Northern District of California focused on in holding that the California law was content-based in *NetChoice, LLC v. Bonta*. *See* 770 F. Supp. 3d 1164, 1188-89 (law regulates business providing online content featuring, among others, "games," "cartoons," "music," or "celebrities who appeal to children" and directs businesses to determine whether children are exposed to "harmful content" (quoting Cal. Civ. Code § 1798.99.33(b)(4) and § 1798.99.3(a)(1)(B)(i))).[9]

Third, the Kids Code does not, as NetChoice asserts, focus on the "impact that speech has on its listeners" simply because §§ 14-4801(s)(2) and (5) use the word "audience." (ECF 40, at 22.) It is not a reasonable interpretation of the Kids Code's use of the word audience to mean only users of social media platforms but exclude users of online products like ridesharing and navigation apps that also collect and process data. Regardless, even if the Kids Code defines "the regulated universe by reference to the 'audience' of speech," (ECF 40, at 22), it does not mean that the Kids Code regulates any protected speech directed to that audience. (ECF 35-1, at 28-29.) Counts I and II must be dismissed.

C. The Kids Code's Restrictions on Data Use and Product Design Do Not Regulate Protected Speech.

1. The Data the Kids Code Restricts Covered Entities from Collecting and Processing Is Not Similar to Ink and Paper Necessary to Publish a Newspaper.

NetChoice claims that restrictions on data collection in the Kids Code restrict publication of speech in the same way that withholding ink and paper and subscriber addresses would impair publication and delivery of newspapers. (ECF 40, at 25-26.) NetChoice's poor analogy is misplaced.

[9] Section 14-4801(s)(1) of the Kids Code incorporates the definition of a "website or online service directed from children" from COPPA, and not any different definition set forth in regulations promulgated by the FTC.

While newspapers cannot be created without ink and paper, online content can be created without, for example, data about minors' purchasing habits or detailed histories of online activities. The functional equivalent of withholding ink and paper from an online platform would be to legislatively deny it the use of electricity, a website domain, and server space.[10] Moreover, the Kids Code does not preclude platforms from contacting and delivering content to their online users in the same way that denying a newspaper physical addresses of subscribers would impair delivery of newspapers. On the one hand, in the same way that a newspaper subscriber can choose to provide their home address to a newspaper publisher to enable home delivery, an online user can choose to provide their e-mail address to an online platform for delivery of online content. The Kids Code does not impair that. On the other hand, just as an individual can visit a newsstand to consume content published by a newspaper publisher without providing the publisher with their home address, an individual can also visit an online content publisher's website to consume the content published by the platform without providing the publisher with their email address (unless compelled to do so by the platform to access content). The Kids Code also does not impair that.[11]

2. Prohibiting the Use of Dark Patterns Does Not Restrain Speech.

As defined by the Kids Code, dark patterns are created to "subvert[] or impair[] user autonomy, decision making, or choice." Com. Law § 14-4801(i)(1).[12] As defined by the Kids

[10] NetChoice alleges that some data is needed for baseline functionality. (ECF 27 ¶¶ 42-44; ECF 40, at 5.) The Kids Code does not prohibit the use of that kind of data. Com. Law § 14-4806(a)(3).

[11] Because NetChoice's ink and paper analogy falls flat, the Kids Code is not comparable to a tax on ink intended to disproportionately affect certain speakers. *Cf. Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Rev.*, 460 U.S. 575, 578, 591 (1983) (special use tax on ink was differentially applied and disproportionately shouldered by a small group of newspapers and accordingly was an unconstitutional burden of those newspapers' speech rights). Moreover, the Kids Code does not single out certain social media companies, social media companies in general, or any other kind of online service provider, with a disproportionate cost to the dissemination of their messages.

[12] The Kids Code also defines dark patterns to include "any practice identified by the [FTC] as a dark pattern." Com. Law § 14-4801(i)(2). The FTC has defined dark patterns to be "design practices that trick or manipulate users into making choices they would not otherwise have made and that may cause harm." Staff Report, Fed. Trade

Code, dark patterns, therefore, are not "benign." (ECF 40, at 28.) And, as explained, to the extent that dark patterns constitute speech, they are misleading speech not fully protected by the First Amendment. (ECF 35-1, 23-24.) If a feature is "benign" and is merely designed to "simplify and improve the expressive experience" of an online platform, as NetChoice asserts (ECF 40, at 28), then it would not to be a dark pattern as defined by the Kids Code.

In any event, these subversive features are prohibited when they are used to cause children to either provide more personal data than would be reasonable, circumvent privacy protections, or "take any action that the covered entity knows, or has reason to know, is not in the best interests of children who access or are reasonably likely to access the online product." Com. Law § 14-4806(a)(7). This is not a vague standard. Furthermore, the "knows, or has reason to know" limitation of § 14-4806(a)(7) along with an opportunity to cure, *id.* § 14-4809, protects entities from liability for accidental violations.

3. Preventing Third Parties from Monitoring Children's Online Activity Does Not Burden Speech.

The Kids Code prohibits "[a]llow[ing] a person other than a child's parent or guardian to monitor the child's online activity without first notifying the child and the child's parent or guardian." Com. Law § 14-4806(a)(9). Boiled-down, NetChoice argues that this requirement violates the First Amendment because it precludes individuals from anonymously "friending" or "following" minors who are not their children and, as a result, infringes such individuals' right to "receive" or "read" the speech of others as well as the right to anonymously associate with minors who are not their children. (*See* ECF 40, at 26-28.) NetChoice's argument is unsupported.

Comm'n, Bringing Dark Patterns to Light 2 (2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf.

To the extent "friending" and "following" constitute monitoring, the Constitution does not, as NetChoice implies (*see* ECF 40, at 27),[13] recognize "a generalized right of 'social association.'" *City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989) (ordinance limiting use of dance halls to persons of ages 14 to 18 did not violate such person's associational rights). Accordingly, a nonparent does not have a "constitutionally guaranteed right of freedom of general association with whomever he chooses," including the minor child of another individual. *See Wittman v. California Dep't of Soc. Servs.*, No. C 02–2893, 2002 WL 31398711, at *6 (N.D. Cal. Oct. 22, 2002), *aff'd in part and rev'd in part on other grounds sub nom. Wittman v. Saenz*, 108 F. App'x 548 (9th Cir. 2004) (citing *Stanglin* and granting motion to dismiss lawsuit by boyfriend of children's mother challenging order removing children from household). Rather, the Supreme Court has recognized associational rights to the limited extent (1) necessary to secure "'intimate human relationships . . . against undue intrusion by the State'"[14] or (2) if they involve persons engaging in activities protected by the First Amendment, such as "'speech, assembly, petition for the redress of grievances, and the exercise of religion.'" *Stanglin*, 490 U.S. at 24 (quoting *Roberts*, 468 U.S. at 617-18).

To the extent that "friending" and "following" may in some circumstances constitute expressive conduct that falls within these two limited categories of recognized associational rights, NetChoice cites no authority to support specific assertions that (1) an individual may anonymously, to the exclusion of a minor's parent or guardian, maintain an "intimate human

[13] (*See* ECF 40, at 27 (indicating that "friending" and "following" relates to a right to associate with others and an "expressive choice by the listener to receive content from selected speakers or groups" but not suggesting receiving that content is otherwise impossible or that absent a notification requirement, that user would otherwise be able to "friend" or "follow" any minor).)

[14] In *Board of Dirs. of Rotary Int'l v. Rotary Club of Duarte*, the Supreme Court explained that this first category is limited to relationships "that presuppose 'deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life.'" 481 U.S. 537, 545 (1987) (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 619-20 (1984).

relationship" with a minor who is not their child or (2) in the absence of an intimate relationship, an individual may anonymously associate with a minor who is not their child, even if the association involves speech that may otherwise be protected by the First Amendment. If, as the Court held in *Stanglin*, minors do not have an unfettered right to associate with adults who are not their parents, it necessarily follows that adults do not have an unfettered right to associate (openly or anonymously) with minors who are not their children. And the cases NetChoice cites do not hold otherwise. *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995) (upholding First Amendment challenge to fine imposed for anonymous distribution of political leaflets); *Talley v. California*, 362 U.S. 60 (1960) (invalidating city ordinance prohibiting anonymous leaflets); *NetChoice v. Carr*, No. 1:25-cv-2422-AT, 2025 WL 1768621, at *15 (N.D. Ga. June 26, 2025) (holding that universal age verification requirement would chill speech by adults).

Furthermore, allowing an unfettered right to associate with a minor who is not one's own child would run headlong into parents' fundamental right to "make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). The Kids Code's notification requirement facilitates parents' right to manage the upbringing of their children, which necessarily includes a right for parents to determine and control who their children may or may not associate with and to set parameters, such as time limits, on the extent and nature of their children's association and visitation with individuals in the physical and virtual worlds. *See id*. at 65-73 (holding that Washington statute providing that any person may petition court for visitation violated right of parent to determine whether visitation served child's best interest). Needless to say, a parent's ability to exercise the right to make such decisions is hampered if the parent is unaware that individuals are associating, following, or monitoring their child. This is no

less true when the association occurs online where, because of a lack of physical presence, it may be easier for an unknown adult to anonymously associate with a minor who is not their child.

Finally, the Supreme Court recently confirmed that not every burden on adults' access to speech, even when content-based, always triggers strict scrutiny. *See Free Speech Coalition, Inc. v. Paxton*, 145 S. Ct. 2291, 2310-11 (2025). The Court applied intermediate scrutiny and found constitutional a Texas law that required websites that "knowingly and intentionally publish[] or distribute[] material on an Internet website, . . . more than one-third of which is '[s]exual material harmful to minors'" to verify that their users are adults. *Id.* at 2300 (quoting Tex. Civ. Prac. & Rem. Code Ann. § 129B.002(a)) (all but first two alterations original). The Court explained that prior cases considered "outright bans" on speech, not "whether lesser burdens aimed at distinguishing children from adults directly regulate any free speech right of adults." *Id.* at 2315. The Court noted that a state "may enact laws to prevent minors from accessing" sexually explicit content that is obscene to minors, even if it is not obscene to adults. *Id.* at 2303-04 (also noting that states can "impose greater limits on children's access to sexually explicit speech" than on adults' access). Furthermore, the Court observed that "technology has changed . . . dramatically," as has the way that minors engage with the internet, writing that "in 2024, 95 percent of American teens had access to a smartphone, allowing many to access the internet at almost any time and place." *Id.* at 2314.

Accordingly, while the Court's earlier decisions, which dealt with "'the internet' as it existed in the 1990s," did not "cease to be precedential," the Court instructed that "respect for past judgments also means respecting their limits." *Id.* (citing *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) and *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004); other internal citations omitted). In light of the Supreme Court's holding, to the extent that "friending"

or "following" constitutes monitoring and speech when involving only adults, the minimal burden of requiring parental notification should not be held to a strict scrutiny standard and is not an impermissible burden on speech. For all of these reasons, Count VI must be dismissed.

D. The Assessment Requirements Are Not Impermissible Compelled Speech.

NetChoice argues that the Assessments require covered entities to opine on a "subjective, abstract and 'highly controversial'" topic and constitute impermissible compelled speech. (ECF 40, at 24.) But there is nothing controversial about protecting children from potential harm.[15] *See, e.g.*, *CTIA – The Wireless Assoc. v. City of Berkeley*, 928 F.3d 832, 846-48 (9th Cir. 2019).[16] Indeed, if the question were so controversial so as to violate the First Amendment, then a state could never require a company conducting business in the state to even privately disclose information about the safety of its products. As explained, the Kids Code requires that entities form their own conclusions and does not dictate that entities use any particular language when preparing Assessments. (ECF 35-1, at 31-32.); *see generally* Com. Law § 14-4804.

[15] NetChoice asserts that the Assessments require that "companies must 'recast [their] content-moderation,' child safety, and data management 'practices in language prescribed by the State, implicitly opining on whether and how certain controversial' practices around the selection and display 'of content should be moderated.'" (ECF 40, at 24 (citing *X Corp. v. Bonta*, 116 F.4th 888, 901 (9th Cir. 2024)). But the law at issue in *X Corp.* is not analogous to the Kids Code because that law required social media companies to describe their content moderation policies, including the company's "policy views on intensely debated and politically fraught topics, including hate speech, racism, misinformation, and radicalization." *Id.* at 901-02. In any event, NetChoice's assertion is incorrect. Because nothing in the Kids Code requires an assessment of content or imposes liability because of content, then a requirement to include a "description of steps taken to comply with the duty to act in the best interests of children," cannot not require covered entities to act as censors. (*See also* ECF 35-1, at 30 & n.19.)

[16] In *CTIA*, the Ninth Circuit affirmed that a trade association was unlikely to succeed in its First Amendment challenge to an ordinance requiring that cell phone retailers make a disclosure including the statement: "If you carry or use your phone in a pants or shirt pocket or tucked into a bra when the phone is ON and connected to a wireless network, you may exceed the federal guidelines for exposure to RF radiation." *CTIA*, 928 F.3d 832, at 846, 849. The court noted that it was non-controversial because it was factual ant not misleading; there was no disagreement that radio-frequency radiation can be dangerous to cell phone users; and the disclosure did require retailers to "take sides in a heated political controversy." *Id.* at 848.

Furthermore, the Assessments are protected as confidential and exempted from public disclosure. Com. Law § 14-4811. Thus, this case is unlike *Pharmaceutical Research & Manufacturers of America v. Stolfi*, where the court applied a higher level of intermediate scrutiny to a law which required pharmaceutical companies to report information for public dissemination regarding drug prices and healthcare costs. 724 F. Supp. 3d 1174, 1200 (D. Or. 2024). *Cf. United States v. Sindel*, 53 F.3d 874, 877-78 (8th Cir. 1995) (requiring reporting of cash transactions in excess of $10,000 to the IRS does not impermissibly compel speech because it does not require public dissemination of a message with which the filer disagreed).

Finally, while Defendants cited to *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985) and other cases to explain why the Assessments enjoy less First Amendment protection (ECF 35-1, at 31-32), NetChoice only distinguishes *Zauderer* (*see* ECF 40, at 24). But a disclosure required in a commercial speech context is not the only area where First Amendment protections are less strict (*see* ECF 35-1, at 31-32). For instance, the Southern District of New York found that *Zauderer* did not apply to an SEC regulation requiring public disclosure of material non-public information that had already been selectively disclosed. *S.E.C. v. AT&T, Inc.*, 626 F. Supp. 3d 703, 749 (S.D.N.Y. 2022). Nonetheless, it was also "clear to the Court that strict scrutiny does not apply" because, among other reasons, the regulation "does not implicate political speech; it does not restrict speech; and it does not implicate expressions of opinion or points of view, but concerns only factual information." *Id.* at 750; *see also id.* at 754 (holding that, at most, the regulation in question was held to an intermediate scrutiny standard). As explained in Defendants' opening brief, at most, intermediate scrutiny should be applied to the Assessment requirement as well. (ECF 35-1, at 31-32.) Because the Assessments do not impermissibly compel speech, Count V must be dismissed.

E. The Kids Code Serves an Important Government Interest.

In its opposition, NetChoice claims that its members "work hard to ensure that minors do not encounter harmful speech on their services," and label it "startling and dangerous" that the State would oversee such activity. (ECF 40, at 17.) Again, the law does not prevent minors from seeing any kind of speech on the Internet. *See* Com. Law §§ 14-4810(3), (4). But as to the regulation of data privacy and data processing practices, that conduct is well within the State's power to regulate; "States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (quotation marks omitted); *see also ACA Connects – America's Comm'ns Ass'n v. Frey*, 471 F. Supp. 3d 318, 325 (D. Me. 2022). Furthermore, according to the testimony heard by the General Assembly, some covered entities employ practices that the Kids Code seeks to prevent, such as the use of dark patterns, knowing the adverse impact such practices could have on children. (*See* ECF 35-1, at 1.)

IV. THE KIDS CODE IS NOT IMPERMISSIBLY VAGUE.

For the reasons stated in Defendants' opening brief, the Kids Code's "bests interest of children" and "reasonably likely to be accessed by children" standards are not vague. Applying common sense to the plain language of the statute, covered entities will know whether they are regulated by the Kids Code and what conduct they must undertake or refrain from. (ECF 35-1, at 34-38.)

NetChoice argues that the Kids Code's use of common legal standards such as "reasonably foreseeable" and "highly offensive" is not clear because the concept of reasonable foreseeability in the tort context is typically tethered to the physical world. (ECF 40, at 36.) Contrary to NetChoice's assertion, courts do impose tort liability to conduct tethered in the virtual world, such

as to injuries caused by improper data processing.[17] While the Kids Code may impose liability for conduct associated with data processing, it does not "transpose[tort] concepts onto protected expression" (ECF 40, at 36), as it does not impose liability for protected expression. Because covered entities understand what is expected of them under the Kids Code, Counts III and IV must be dismissed.

V. THE KIDS CODE IS NOT PREEMPTED BY FEDERAL LAW.

A. The Kids Code Is Not Preempted by COPPA.

As explained by the FTC, "[t]he primary purpose of COPPA is to protect children's online privacy by requiring verifiable parental consent before an operator collects personal information." *Children's Online Privacy Protection Rule*, 78 Fed. Reg. 3972, 4001 (Jan. 17, 2013); *see also Shanahan v. IXL Learning, Inc.*, No. 24-cv-02724-RFL, 2024 WL 4658276, at *3 (N.D. Cal. Nov. 1, 2024). The Kids Code is consistent with this purpose.

In *Jones v. Google LLC*, 73 F.4th 636 (9th Cir. 2023), the Ninth Circuit explained that when a statutory preemption clause uses the term "inconsistent," the inquires under express and conflict preemption "effectively collapse into" a single inquiry as to whether "state law stands as an obstacle to the accomplishment and execution" of the federal law. 73 F.4th at 644 (quotation marks and citation omitted). "Inconsistent," the court explained, refers to "contradictory state law requirements, or to requirements that stand as obstacles to federal objectives." *Id*. at 642. *Jones*

[17] *See, e.g.*, *Mohamed v. Bank of Am., N.A.*, 771 F. Supp. 3d 695, 715-16 (D. Md. 2025) (defrauded plaintiff can bring negligence claim against bank for failing to protect and secure plaintiff's information and account and allowing unauthorized access by fraudster); *In re Marriott Int'l, Inc. Customer Data Security Breach Litig.*, No. 19-md-2879, 2020 WL 6290670, at *2-3, *6, *10 (D. Md. 2020) (plaintiffs can bring data breach case under negligence theory when defendant was specifically tasked with protecting their data but failed to implement adequate security safeguards and, accordingly, could foresee exposure to liability).

does not indicate that the test it articulated applies only when—as happened to be the case in *Jones*—the conduct subject to state law also violates COPPA.[18]

In *GenBioPro*, the Fourth Circuit held that a state law prohibiting abortion was not preempted by a federal law which provided the FDA with authority over drug safety and pursuant to which the FDA approved and regulated the use of a medication used to induce abortions. 144 F.4th at 270-78. In so ruling, the court emphasized that, in "our federalist framework," Congress must "speak clearly" if it intends to preempt a state law in an area "of traditional state authority," such as health and safety. *Id*. at 271-73. In holding that the state law was not preempted, the court rejected an argument that preemption was required because the federal law impliedly struck a balance between drug safety and drug access. *Id*. at 275-77. While acknowledging that Congress balances competing interests in all legislation it passes, the court explained that "courts are confined to enforcing the balance that is reflected in the text of the statute" and not "an alternative balance that Congress may have hidden between the lines." *Id*. at 277.

As with any law, Congress may have balanced competing interests when it enacted COPPA. But Congress should have spoken clearly if, for example, it intended to preclude state legislation that protects the health and safety of all minors, including those of ages 13-17. Congress cannot, through its silence, manifest a clear intention to preempt a state health and safety law. *See GenBioPro*, 144 F.4th at 271-73; *Northern Va. Hemp & Agric., LLC v. Virginia*, 125 F.4th 472, 493 (4th Cir. 2025) ("[A] court should not find conflict preemption unless preemption was the clear and manifest purpose of Congress.") (quotation marks omitted). Therefore, Congress's

[18] *See also Hartman v. Meta Platforms, Inc.*, No 3:23-cv-02969-NJR, 2024 WL 4213302, at *16-18 (S.D. Ill. Sept. 17, 2024) (applying *Jones* in holding that COPPA did not preempt Illinois privacy law that allowed a private cause of action and imposed requirements not found in COPPA); *cf. GenBioPro, Inc. v. Raynes*, 144 F.4th 258, 275 (4th Cir. 2025) (conflict preemption arises when (1) it is not possible to comply with both state and federal laws or (2) "state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (quotation marks omitted)).

exclusion of minors age 13-17 from COPPA does not, as NetChoice suggests (ECF 40, at 42-43), mandate preemption by implication, particularly when it is possible for companies to comply with both COPPA and the Kids Code's data restrictions.

The other differences NetChoice identifies between the Kids Code and COPPA are just that—differences. Differences alone do not mandate preemption. *See Hartman*, 2024 WL 4213302, at *16-18. While arguing that those differences constitute "inconsistencies," NetChoice does not contend that it is impossible for companies to comply with both laws. Indeed, not only is it possible for companies to comply with both laws, the Kids Code furthers COPPA's primary purpose of protecting children's online privacy. This court cannot read between the lines to protect policy frameworks not expressed in COPPA. Accordingly, NetChoice's claim in Count VII of the amended complaint that COPPA preempts the Kids Code fails as a matter of law.

B. The Kids Code Is Not Preempted by Section 230.

Section 230 (47 U.S.C. § 230) narrowly "protects some parties operating online from specific claims that would lead to liability for conduct done offline." *Henderson v. Source for Pub. Data, LP*, 53 F.4th 110, 117 (4th Cir. 2022). That protection "extends only to bar certain claims imposing liability *for specific information* that another party provided." *Id*. (emphasis original). Importantly, section 230 "is not a license to do whatever one wants online." *Id*.

To be afforded the protection offered by section 230, a defendant must establish that (1) it is a "provider or user of an interactive computer service," (2) the "plaintiff's claims hold the defendant responsible as the publisher or speaker of any information," and (3) the "relevant information was provided by another information content provider." *Id*. at 119 (quotation marks omitted). Because NetChoice cannot establish the second and third requirements, section 230 is inapplicable to, and does not preempt, the data restrictions and Assessment requirements of the Kids Code. As such, Count VIII of the amended complaint fails.

As to the second requirement, no "claim" has been asserted against any of NetChoice's members. Moreover, to the extent that the adoption of the Kids Code, in and of itself, constitutes a "claim" for purposes of section 230, a claim only treats a defendant "as the publisher or speaker of any information" if it "(1) bases the defendant's liability on the disseminating of information to third parties and (2) imposes liability based on the information's improper content." *Henderson*, 53 F.4th at 123.[19]

To the extent that NetChoice's members publish content, whether or not the content protected by the First Amendment, the data restrictions and Assessment requirements of the Kids Code regulate the members' pre-publication activities. *See* Com. Law §§ 14-4804, 14-4806. It is for that very reason NetChoice complains that the pre-publication data restrictions in § 14-4806 will interfere with its members' ability to publish content targeted to their users. For example, NetChoice claims that the collection and use of data is similar to the "ink and paper necessary to publish newspapers" and "subscriber addresses necessary to distribute them," analogies to the underlying tools and information necessary to publish and distribute content, but unrelated to the actual content itself. (*See* ECF 40, at 25.)

Moreover, as discussed, liability under the Kids Code is not predicated on online platforms' publication of content that might be deemed "improper;" indeed, the propriety of any content they publish is irrelevant to the imposition of liability under the Kids Code. Thus, if an online platform processes personal data of a child, profiles a child, processes precise geolocation data of a child, uses dark patterns, or allows a person other than a child's parent or guardian to monitor a child's

[19] *See also Henderson*, 53 F.4th at 120 ("for the protection [of section 230] to apply, the claim must turn on some 'information,' and must treat the defendant as the 'publisher or speaker' of that information."); *id*. at 122 ("To meet the second requirement for § 230(c)(1) protection, liability under the claim must be 'based on the *content of the speech published'* by the interactive service provider.") (emphasis in *Henderson*; quoting *Erie Ins. Co. v. Amazon.com, Inc.*, 925 F.3d 135, 139 (4th Cir. 2019)); *id*. ("[F]or § 230(c)(1) to apply, we require that liability attach to the defendant on account of some improper content within their publication.").

online activity in violation of the Kids Code, it is irrelevant whether the platform is a publisher of "improper content." *See* Com. Law § 14-4806. Likewise, if an online platform fails to conduct an Assessment as required by the Kids Code, it is irrelevant whether the platform has published "improper content." *See id*. § 14-4804. For these purposes, the nature of published content is irrelevant.[20] In this regard, liability under the Kids Code is akin to "failing to maintain proper procedures [which] does not seem to fall within § 230(c)(1)'s ambit." *Henderson*, 53 F.4th at 125.[21] NetChoice also cannot demonstrate the third requirement (that improper information be provided by another content provider) because the Kids Code regulates online platforms' pre-publication activities and does not impose liability for publication of improper content.

The cases on which NetChoice relies to support its section 230 preemption argument are inapposite because, unlike application of the Kids Code, each involved claims seeking to impose liability based on the actual publication of improper content. (ECF 35-1 at 40.) For example, the state law claims asserted in *Pinckney* were found to be inextricably intertwined with Facebook's role as a publisher of third party content because, at bottom, the plaintiff's claims were rooted in the premise that Dylann Roof's exposure to improper racist content fed to him by Facebook

[20] A defamation claim seeking to hold an online platform liable for publishing content generated by a third-party is a clear-cut example of a post-publication "claim" that falls within the ambit of section 230. In contrast with liability for failing to comply with the data restrictions or DPIA requirements of the Kids Code, absent the protection of 230, liability for a defamation claim would attach due to the actual publication of improper, defamatory content. *See Henderson*, 53 F.4th at 122. In *Henderson*, the Fourth Circuit rejected a broad "but-for publication test," such as that advocated by NetChoice, under which section 230 protection is afforded "if liability hinges in any way on the act of publishing." *Id*. at 122-23. The "improper-content requirement," the court explained, "helps dispel [any] notion that a claim holds a defendant liable as a publisher anytime there is a 'but-for' causal relationship." *Id*. at 122. Thus, in *Henderson*, although the plaintiff's claims under the Fair Credit Reporting Act ("FCRA") hinged on the content of published information, section 230 protection was available only if the FCRA claims required that "the information's content be improper before imposing liability." *Id*. at 124.

[21] Although failing to maintain procedures generally falls outside of section 230's coverage, due to Fourth Circuit precedent with an "unclear" "textual basis" in FCRA, in *Henderson*, the plaintiff's claims for failing to maintain procedures mandated by FCRA did depend on the dissemination of improper content. 53 F.4th at 125-26. Regardless, section 230 did not apply to such claims because the defendant, and not a third-party, was the provider of the content at issue. *Id*. at 126-29.

nurtured his racist, violent views which ultimately caused him to murder nine churchgoers. 127 F.4th at 521-27.[22]

Section 230 only precludes the imposition of liability based on inconsistent state law. 47 U.S.C. § 230(e)(3). Section 230 is inapplicable because no claim for violation of the Kids Code has been asserted against NetChoice's members and, if brought, any claim would not be predicated on the publication of improper content by an online platform. Because enforcement of the data restrictions and DPIA requirements in the Kids Code falls outside the ambit of section 230, such provisions are not inconsistent with section 230 and, therefore, they are not preempted. Accordingly, Count VIII must be dismissed.

CONCLUSION

The motion to dismiss should be granted.

[22] *See also Doe v. Grindr Inc.*, 128 F.4th 1148, 1152-54 (9th Cir. 2025) (plaintiff sought to impose liability based on communications he received from sexual predators through defendant's online platform); *Estate of Bride v. Yolo Tech., Inc.*, 112 F.4th 1168, 1179-82 (9th Cir. 2024) (plaintiffs' product liability claims sought to impose liability based on bullying and harassing communications children received online from third-parties); *Doe (K.B.) v. Backpage.com, LLC*, 768 F. Supp. 3d 1057, 1060-67 (N.D. Cal. 2025) (plaintiff sought to impose liability based on third-parties' publication of sex trafficking content).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on this 15th day of August, 2025, copies of Defendants' Motion to Dismiss, supporting Memorandum of Law and proposed order were served by CM/ECF on all counsel of record.

/s/ Jessica M. Finberg
_____
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