

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

NETCHOICE,

Plaintiff,

v.

CASE No. 5:25-CV-05140-TLB

TIM GRIFFIN, in his official capacity as Attorney General of Arkansas; TODD MURRAY; SONIA FONTICIELLA HAGOOD; DEVON HOLDER; BRANDON CARTER; JEFF PHILLIPS; WILL JONES; TERESA HOWELL; BEN HALE; CONNIE MITCHELL; DAN TURNER; JANA BRADFORD; FRANK SPAIN; TIM BLAIR; S. KYLE HUNTER; DANIEL SHUE; JEFFREY ROGERS; DAVID ETHREDGE; TOM TATUM, II; DREW SMITH; REBECCA REED MCCOY; MICHELLE C. LAWRENCE; DEBRA BUSCHMAN; ROBERT T. (TONY) ROGERS; BRYAN SEXTON; CAROL CREWS; KEVIN HOLMES; CHRIS WALTON; and CHUCK GRAHAM, each in his or her official capacity as a prosecuting attorney for the State of Arkansas,

Defendants.

DEFENDANTS' RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Social media companies are aware that “[t]eens want help controlling the time they spend on” social media. Ex. B-1, The Wall Street Journal, *Teen Mental Health Deep Dive* 53 (Sept. 29, 2021). They know that those same teens “recognize the amount of time they spend online isn’t good for them but at the same time know they lack the willpower to control the time spent themselves.” *Id.* And “[a]lthough others’ behaviors online can hurt, the self-scrutiny and anxiety associated with [teens’] personal consumption patterns is more damaging to mental health.” *Id.* at 34. “In some cases, they can get addicted to things that make them feel bad.” *Id.* In fact, when asked about their relationship to the social media platform, Instagram, they reported that “the amount of time they spend on Instagram” was “one of the ‘worst’ aspects of their relationship to the app.” *Id.* at 53. But social media companies put the onus for avoiding and fixing addiction on children: “[y]oung people know this, but they don’t adopt different patterns.” *Id.* at 34.

Those same companies do not prioritize implementing designs that actually help teens and other young users minimize the time spent on social media. Instead, their aim is to maximize revenue by “keep[ing] people engaged and hanging out with [them].” John Doerr, *Measure What Matters: How Google, Bono, and the Gates Foundation Rock the World with OKRs* 161 (2017).¹ In other words, the more time users spend on social media, the more ads social media companies can sell, the more money those companies make. And without any mooring to prevent these companies from doing otherwise, that leads to an even more nefarious outcome: social media

¹ In *Measure What Matters*, YouTube’s current Vice President of Engineering explains how he spearheaded the effort at YouTube to implement “a watch-time-optimized version of [YouTube’s] recommendation algorithm aimed at improving user engagement and satisfaction.” *Id.* at 162. But even user engagement and satisfaction is not the end goal because “[m]ore satisfied viewership (watch time) begets more advertising, which incentivizes more content creators, which draws more viewership.” *Id.* at 161. And that’s most important to these companies because “[f]ewer ads mean[s] less revenue.” *Id.*

companies engage in practices and implement designs intended to cause users, especially the most vulnerable users (*i.e.*, children), to become addicted to their platforms.

But children are not fair game to exploit for monetary gain. Even Silicon Valley’s architect of the “original manual” for building addictive technology² recognized that children cannot “bear ultimate responsibility for their actions” when it comes to avoiding an addiction to social media. Nir Eyal, *Hooked: How to Build Habit-Forming Products* 175 (2014). Children and younger teens cannot give informed consent to the consequences of social media’s addictive features—they cannot make an agreement “with full knowledge of the risks involved and the alternatives.” *Informed Consent*, Black’s Law Dictionary (12th ed. 2024). The gambling industry threatens a similar risk of behavioral addiction, Ex. B-2, P. Ferrara, *The Risk of Gambling Disorders in Children and Adolescents* 210 J. Pediatrics 245, 246 (2019), but that risk is inherent in the practice of gambling itself. One who gambles will always be wagering something in hopes of obtaining some reward. For example, recognizing the inherent dangers of gambling, the Arkansas Legislature prohibits retailers from selling lottery tickets to children under 18 altogether. *See* Ark. Code Ann. § 23-115-901. Here, however, the Arkansas Legislature, recognizing that social media, unlike gambling, can be a vital outlet for minors to engage in speech, passed Act 900 of 2025, specifically regulating social media companies’ **conduct** on their platforms—not prohibiting minors or social media companies from speaking or being spoken to.

Undoubtedly, “as the march of technology makes the world a potentially more addictive place, innovators need to consider their role. It will be years, perhaps generations, before society develops the social antibodies to control new habits; in the meantime many of these behaviors may

² Ex. B-3, Nellie Bowles, *Addicted to Screens? That’s Really a You Problem* (Oct. 6, 2019).

develop harmful side effects. For now, users must learn to assess these yet-unknown consequences for themselves, while creators will have to live with the moral repercussions of how they spend their professional lives. Eyal *Hooked*, at 175–76. That is just the thing, though. Social media companies are not considering their role. Instead, many social media companies are seizing opportunities to make a devoted consumer out of anyone in their largely unregulated field, even if it causes the most vulnerable harm. That is why the Arkansas Legislature passed Act 900 of 2025.

BACKGROUND

Social media companies know that many of their practices are designed to cause minor users to become addicted to their platforms. And though NetChoice’s members, through their membership with NetChoice, now protest that they don’t understand what the Arkansas Legislature meant when it prohibited them from engaging in “practices” designed “to evoke any addiction or compulsive behaviors in an Arkansas user who is a minor,” Ark. Code Ann. § 4-88-1402(d)(1), they implicitly (and perhaps explicitly) acknowledge the addictive nature of their platforms by announcing that they are creating tools to help users fight social media addiction. Ex. B-4, C. Booth, *Facebook and Instagram officially announce new tools to fight social media addiction; see also* Ex. B-5, K. Huamani, et al., *Landmark trial accusing social media companies of addicting children to their platforms begins* (Feb. 9, 2026) (“[T]wo major findings of Meta’s internal study “Project Myst” “were that the company knew children who experienced ‘adverse events’ like trauma and stress were particularly vulnerable for addiction; and that parental supervision and controls made little impact.”).

The problem is: these tools are largely ineffective for minors with social media addiction.³ Ex. B-6, Przybylski & V. Nash, *Internet Filtering and Adolescent Exposure to Online Sexual Material, Cyberpsychology, Behavior, and Social Networking* (July 1, 2018), (<https://pmc.ncbi.nlm.nih.gov/articles/PMC6101267/>) (“[E]vidence derived from a more stringent and robust empirical approach indicated that [filters] are entirely ineffective.”). But more importantly, these tools do not stop social media companies from engaging in conduct intended to addict minor-users to their platforms. Ex. B-7, A. Koch, *Stanford psychiatrist testifies in California trial that social media platforms are designed to be addictive* (Feb. 10, 2026). Act 900 was enacted to address this gap—prohibiting these companies from intentionally engaging in deceptive trade practices.

Deceptive Trade Practices Act

Act 900 is codified under Chapter 88 of the Arkansas Code, which regulates deceptive trade practices and imposes criminal and civil penalties for violating the provisions contained within the chapter. Specifically, liability is limited on the front end since Chapter 88 “does not apply to . . . [b]roadcasters, printers, publishers, and other persons engaging in the dissemination of information who do not have *actual knowledge* of the *intent, design, purpose, or deceptive nature* of the . . . practice.” Ark. Code Ann. § 4-88-101(2) (emphases added).

³ See also J. Jargon, *Apple Admits to Bug in Screen Time Parental Controls* (July 29, 2023), https://www.wsj.com/tech/personal-tech/apples-parental-controls-are-broken-55a2aa52?mod=article_inline; Top 8 Ways Kids Can Bypass Parental Controls and How to Stop Them (Dec. 29, 2023), <https://medium.com/@susan.larcom/top-8-ways-kids-can-bypass-parental-controls-and-how-to-stop-them-c7461ceb783a>; How to Delete Parental Controls on Android (Best Method) (Without Pin, 2025) <https://www.youtube.com/watch?v=FNpq2DMYRZU>; B. Greenfield, *Parents are worried about their kids' smartphone use—but less than half fully utilize parental controls, research finds* (May 29, 2025) (<https://fortune.com/well/2025/05/29/parental-controls-kids-smartphone-social-media/>).

Act 900 of 2025

To mitigate the harms described above, the Arkansas Legislature passed Act 900 of 2025, which amended Act 689 of 2023, also called the Social Media Safety Act. Ex. A, Act 900. Among other changes, Act 900 revised Act 689's definitions, and the definitional changes became effective on August 5, 2025. The definition of "[s]ocial media platform" was expanded to be "a business entity or organization that operates an online platform, application, or service" that has six characteristics, including that it is "designed to facilitate user-to-user, user-to-group, or user-to-public interaction," "[p]rovides mechanisms for a user to create an online profile comprised of personally identifiable information," "[e]mploys features that allow a user to connect, follow, or establish a relationship with other users," and "[g]enerates revenue primarily through user engagement." Ark. Code Ann. § 4-88-1401(11)(A) (2025). The definition excludes "an email service provider, a not-for-profit organization, a public or private school, business-to-business software, a common carrier, or a broadband internet service." *Id.* § 4-88-1401(11)(B). The amendments also changed "minor" to mean children under 16, *id.* § 4-88-1401(11)(A), rather than individuals under 18, *id.* § 4-88-1401(5) (2023). And the amendments also tweaked the definition of account holder. Originally, account holder was defined as someone "who creates an account or a profile to use a social media platform," *id.* § 4-88-1401(1). But recognizing that children could enlist the help of an older individual to help them create an account, the Act was expanded to encompass those who "otherwise control[] an account or a profile to use a social media platform." *Id.* § 4-88-1401(1) (2025).

In addition, the Legislature amended the Act to impose new requirements on social-media platforms to better protect minors that have parental permission to create accounts. For example, social-media platforms will be required to "[e]nsure that, by default," minors do not receive

notifications (“other than safety or privacy-related alerts”) between 10:00 p.m. and 6:00 a.m., that minors have “the most protective” privacy and safety settings offered by the platform, and that parents have access to an “online dashboard” that helps them to understand their child’s use of the social-media platform and restrict access to it. Act 900, § 2 (to be codified at Ark. Code Ann. § 4-88-1402(d)(2), (4)). To allow ample time for compliance, these new requirements, along with others, will become effective on April 21, 2026. Act 900, § 8.

NetChoice brought this lawsuit on June 27, 2025, challenging both Act 900 and its companion statute Act 901. On January 12, 2026, NetChoice filed its preliminary-injunction motion primarily challenging Act 900’s provisions on three discrete topics: its prohibition on practices designed to evoke addiction in minor users, its default notification and privacy setting requirements for minor users, and its dashboard requirement for minor users.

Prohibition on Addictive Practices

The first challenge is against two companion provisions containing the prohibition against social media platforms engaging in practices that have the purpose of causing minors in Arkansas to become addicted to the platform:

(d) A social media platform shall:

(1) Consistent with contemporary understanding of addiction, compulsory behavior, and child cognitive development, ensure that the social media platform does not engage in practices to evoke any addiction or compulsive behaviors in an Arkansas user who is a minor, including without limitation through notifications, recommended content, artificial sense of accomplishment, or engagement with online bots that appear human;

...

(3) Conduct an audit at least one (1) time per quarter to ensure that the social media platform’s software, application, or other products are not causing minors to engage in compulsory or addiction-driven behavior

Ark. Code Ann. § 4-88-1402(d)(1) & (3).

Default Notification and Privacy Setting Requirements

Second, NetChoice challenges Act 900's default notification and privacy setting requirements:

(d) A social media platform shall:

...

(2) Ensure that, by default:

(A) Notifications to an Arkansas user who is a minor, other than safety or privacy-related alerts, are ceased between the hours of 10:00 p.m. central standard time (CST) and 6:00 a.m. central standard time (CST) and allow a parent or guardian to modify this setting; and

(B) Privacy and safety settings for an Arkansas user who is a minor on a covered social media platform provides the most protective level of control for privacy and safety offered by the covered social media platform

Id. at § 4-88-1402 (d)(2)(A) & (B).

Dashboard Requirement

Lastly, NetChoice challenges Act 900's dashboard requirement for minor users:

(d) A social media platform shall:

...

(4)(A) Develop an easily accessible online dashboard to allow a parent of a minor user to view and understand his or her child's use habits on the covered social media platform.

(B) The online dashboard under subdivision (e)(4)(A) of this section shall also provide tools for a parent to restrict his or her minor child's access to the covered social media platform, or logical portions of the covered social media platform.

Id. at § 4-88-1402(d)(4)(A) & (B).

NetChoice’s motion should fail for a multitude of reasons. It is not likely to succeed on the merits, has not shown it will suffer irreparable harm, has not demonstrated the balance of the equities tips in its favor, and has not put enough evidence in front of the Court to prevail on its facial challenge. The Court should therefore deny its preliminary-injunction motion.

LEGAL STANDARD

Preliminary injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Thus, a plaintiff must clearly establish that: “[1] he is likely to succeed on the merits, [2] he is likely to suffer irreparable harm in the absence of preliminary relief, [3] the balance of the equities tips in his favor, and [4] an injunction is in the public interest.” *Id.* (quotation omitted). But when the government is the nonmoving party, “[t]he balance-of-harms and public-interest factors ‘merge.’” *Eggers v. Evnen*, 48 F.4th 561, 564–65 (8th Cir. 2022) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

“When seeking to enjoin the implementation of a state statute, the plaintiff must show ‘more than just a “fair chance” that it will succeed on the merits.’” *Bio Gen LLC v. Sanders*, 142 F.4th 591, 600 (8th Cir. 2025) (quoting *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 731–32 (8th Cir. 2008) (en banc)). Instead, “[i]t must show that it ‘is likely to prevail on the merits.’” *Id.* (quoting *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975)). This is “a more rigorous standard,” which “reflects the idea that governmental policies implemented through legislation or regulations developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly.” *Rounds*, 530 F.3d at 732 (quoting *Able v. United States*, 44 F.3d 128, 131 (2d Cir. 1995)). Therefore, courts “considering

requests to preliminarily enjoin duly enacted state or federal laws . . . should proceed with the greatest caution, greatest humility, and greatest respect for the democratic process.” *Roth v. Jones*, No. 4:25-cv-733, 2025 WL 2414160, at *1 (E.D. Ark. Aug. 20, 2025) (citing *Rounds*, 530 F.3d at 732).

ARGUMENT

I. NETCHOICE CANNOT SHOW IT HAS THIRD-PARTY STANDING TO ASSERT CLAIMS ON BEHALF OF ITS MEMBERS’ USERS.

Before the Court may consider the extraordinary remedy of preliminary injunctive relief, NetChoice must establish standing. At points, NetChoice seems to rely “on the rights of users” under the First Amendment for its First Amendment claim. PI Br. 15. To the extent it does so, NetChoice has not carried its burden of establishing third-party standing because it cannot assert the constitutional interests of its members’ users, much less those of potential future account holders. Nor can it purport to assert the constitutional interests of Arkansas children and override the rights of their parents who seek to protect them from NetChoice’s members’ dangerous products and services.

In evaluating the viability of the “limited” third-party standing exception, courts assess (1) “whether the party asserting the right has a close relationship with the person who possesses the right,” and (2) “whether there is a hindrance to the possessor’s ability to protect his own interests.” *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (quotations omitted). The potential for a future relationship with an unknown third party is insufficient to establish the requisite closeness. *See Swanson v. Hilgers*, 151 F.4th 992, 996 (8th Cir. 2025) (“While ‘*existing*’ relationships may be sufficient to confer third-party standing, ‘*hypothetical*’ relationships with unknown claimants

are not.” (quoting *Kowalski*, 543 U.S. at 131)) (emphasis in original). The Eighth Circuit has squarely rejected any claimed hindrance where the third parties are themselves asserting their own rights. *See Hodak v. City of St. Peters*, 535 F.3d 899, 905 (8th Cir. 2008) (explaining no third-party standing existed where waste generators attempted to assert the rights of waste haulers that were actively litigating their own claims). Moreover, third-party standing is not viable when plaintiffs and third parties have conflicting interests that would interfere with the plaintiffs’ ability to be “effective proponents” of the third parties’ rights. *Gold Cross Ambulance & Transfer v. City of Kansas City*, 705 F.2d 1005, 1016 (8th Cir. 1983); *see, e.g., June Med. Servs. LLC v. Russo*, 591 U.S. 299, 402 (2020) (Alito, J., dissenting) (explaining that the Court has “held that third-party standing is not appropriate where there is a potential conflict of interest between the plaintiff and the third party” and noting that *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004), “recognized the seriousness of conflicts of interest in the specific context of third-party claims”), *abrogated by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

NetChoice cannot meet either prong here. As a preliminary matter, NetChoice has not shown a sufficiently close relationship between its *members* and the users of their platforms—let alone potential future account holders—to support third-party standing. NetChoice’s members have “no relationship at all” with their hypothetical future users, *Kowalski*, 543 U.S. at 131, and no *close* relationship with current users that resembles attorney-client or abortion provider-patient relationships that have been found sufficiently close, *see id.* at 130; *June Med.*, 591 U.S. at 318; *but see Dobbs*, 597 U.S. at 287 n.61 (listing *June Medical* as a case that has “ignored the Court’s third-party standing doctrine”). That defect alone forecloses third-party standing. But NetChoice’s approach here is even more attenuated than that. Indeed, NetChoice—not its members—is once

again seeking to assert members' users' rights, PI Br. 3, 15, 40, further attenuating the relationship between the litigant and the third parties. But NetChoice cannot establish standing to assert users' First Amendment rights by combining associational standing and third-party standing in this fashion to create "a hybrid-type of third-party derivative standing." *Penn. Psychiatric Soc. v. Green Spring Health Servs., Inc.*, 280 F.3d 278, 294 (3d Cir. 2002) (Nygaard, J., dissenting); *see id.* (explaining plaintiff could not cite "any authority for stacking or piggy-backing these relationships into an attenuated concatenation of exceptions to the standing rule"). Associational standing is already on shaky constitutional grounds. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 399 (2024) (Thomas, J., concurring) ("Associational standing raises constitutional concerns by relaxing both the injury and redressability requirements for Article III standing."); *Indus. Energy Consumers of Am. v. FERC*, 125 F.4th 1156, 1168–69 (D.C. Cir. 2025) (Henderson, J., concurring) (explaining how "associational standing has no well-rooted historical pedigree" and creates Article III problems). Accordingly, this Court should hold that "NetChoice cannot assert third-party interests separate from its members" and that "if internet users believe that" Act 900's addictive practices restrictions, default notification limits, privacy defaults, and parental dashboard "requirement will burden their speech, they must raise their own [First Amendment] challenge." *NetChoice, LLC v. Bonta*, 152 F.4th 1002, 1018 (9th Cir. 2025).

In any event, NetChoice cannot meet the second prong either because it has shown no hindrance to Arkansas users' "ability to protect [their] own interests." *Hughes v. City of Cedar Rapids*, 840 F.3d 987, 992 (8th Cir. 2016). Instructively, children have sued to assert their First Amendment rights, including in suits challenging regulation of social-media websites. *See, e.g., Students Engaged in Advancing Texas v. Paxton*, 765 F. Supp. 3d 575, 582 (W.D. Tex. 2025).

Because Arkansas users are not without the ability to protect their own interests, NetChoice necessarily cannot show that “some barrier or practical obstacle . . . prevents or deters the third party from asserting [their] own interest[s].” *Hodak*, 535 F.3d at 904 (quotation omitted). Accordingly, to the extent that NetChoice seeks to assert the First Amendment rights of its members’ users, it lacks standing and cannot show entitlement to injunctive relief.

II. NETCHOICE CANNOT DEMONSTRATE IT HAS ASSOCIATIONAL STANDING.

NetChoice cannot show it has associational standing to pursue First Amendment claims on behalf of its members. To establish associational standing, NetChoice must satisfy the three-part test articulated in *Warth v. Seldin*, 422 U.S. 490 (1975), and later clarified in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977). The association must allege: (1) “its members would otherwise have standing to sue in their own right;” (2) “the interests it seeks to protect are germane to the organization’s purpose;” and (3) “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt*, 432 U.S. at 343.

NetChoice cannot satisfy the third prong because its claims depend on individualized, member-specific facts—and the only evidence it offers to avoid member participation is a declaration from its general counsel that seemingly lacks firsthand knowledge of its members’ practices, relying on the handful of declarations submitted by members’ and on publicly available information. Doc 52-4 (Cleland Decl.) at ¶ 25.

Here, NetChoice’s claims against each of Act 900’s provisions under the First Amendment and the relief it requests turn on how particular members operate. And that’s detrimental to its ability to bring those claims because the Court must “determine whether” each member’s

conduct, practices, features, designs, etc. are “expressive.” *NetChoice, LLC v. Bonta*, 152 F.4th 1002, 1014 (9th Cir. 2025). That “requires [a] review of *each* member’s” conduct, practices, features, designs, etc. “and how [they] function[.]” *Id.* For example, under Act 900’s addictive-practices provisions, a platform that recommends content solely by using artificial intelligence or that uses an “algorithm [that] just presents automatically to each user whatever the algorithm thinks the user will like,” *Moody v. NetChoice, LLC*, 603 U.S. 707, 746 (Barrett, J., concurring), may not have the same ability to challenge those provisions as a platform that uses humans to recommend content to its users. A platform that completely automates push notifications would differ from a platform that employs humans to decide what to say in a notification and when to say it. A platform that has less strict privacy and safety settings available would differ from a platform that has extremely restrictive privacy and safety settings available. A platform that limits access to its platform to only account holders would differ from a platform that allows anyone to visit its platform without creating an account.

“That matters because the unique design of each platform and its algorithm,” along with the other examples listed, “affects whether the algorithm at issue is expressive.” *Bonta*, 152 F.4th at 1014. The Court “need[s] more information—and the participation of individual members—to adjudicate NetChoice’s ‘fact intensive’ claims about all of its members algorithms,” other designs, features, practices, “and the appropriate relief.” *Id.*

Further, even though NetChoice submitted several declarations in support of its preliminary-injunction motion, those declarations are not enough to establish associational standing. If anything, it shows that the variation in operation from platform to platform necessitates the platforms’ individual participation. And what’s more, the only declaration that discusses each of

NetChoice’s members is a declaration from NetChoice’s general counsel that cites public source information available on NetChoice’s members’ websites, not firsthand knowledge of their operations. Doc. 52-4 (Cleland Decl.) at 15–26. That hardly satisfies the “fact intensive” burden NetChoice carries to be able to establish associational standing. *Bonta*, 152 F.4th at 1014 (quoting *Moody*, 603 U.S. at 747). That’s especially true at the preliminary-injunction stage where “[a] preliminary injunction must be narrowly tailored to remedy only the specific harms shown by the plaintiffs, rather than to enjoin all possible breaches of the law.” *Dakotans for Health v. Noem*, 52 F.4th 381, 392 (8th Cir. 2022) (quotation omitted).

On these facts, NetChoice has not met its burden to satisfy the *Hunt*’s third prong for establishing associational standing.

III. THE COURT’S PERMANENT INJUNCTION OF ACT 689 OF 2023 DOES NOT APPLY TO ACT 900’S PROVISIONS, AND BECAUSE NETCHOICE HAS NOT DEVELOPED THIS ARGUMENT, IT HAS FORFEITED OR WAIVED IT.

The Court’s permanent injunction cannot be applied to the current statutory scheme because it was entered with respect to a version of the law that has since been materially amended. Any restraint on enforcement of Act 900 of 2025 would require a new request for—and a showing of entitlement to—injunctive relief directed to the law now in force.

Where an existing injunction applied to an outdated version of a law that has since been substantially altered, plaintiffs still bear the burden of establishing entitlement to such extraordinary relief anew. *See League of Women Voters of Fla. v. Browning*, 575 F. Supp. 2d 1298, 1301 (S.D. Fla. 2008) (both parties proceeding, after substantial amendment materially altered the statute subject to a prior injunction, as though plaintiffs sought a new preliminary injunction, requiring plaintiffs to establish the usual factors); *Ctr. for Individual Freedom, Inc. v. Ireland*, No. CIV.A.

1:08-00190, 2008 WL 4452659, at *1 (S.D.W. Va. Sept. 29, 2008) (declining plaintiff’s request to “extend” an injunction to a “newly enacted statute[]” following its “substantial amendment” as an “extraordinary proposition” that defied “common sense” and lacked legal grounding). Preliminary injunctions are subject to Federal Rule of Civil Procedure 52(a), which requires courts to set forth “the findings of fact and conclusions of law that support its action,” as to the specific statutory text before it. *See* Fed. R. Civ. P. 52(a). One court observed that enjoining enforcement of a substantially amended statute based on earlier findings would contravene that duty under Rule 52. *See Ctr. for Individual Freedom*, 2008 WL 4452659, at *1 (“[W]ere the court to enjoin enforcement of the statutes as amended based on its earlier findings, it would be running afoul of its duty under [Rule] 52.”).

After the Court permanently enjoined Defendant’s enforcement of Act 689 of 2023 as it existed at the time of the Court’s decision—which is the subject of an ongoing appeal—the Arkansas Legislature substantially revised the Social Media Safety Act through Act 900 of 2025, redefining the statute’s scope, coverage, and compliance obligations in ways that materially depart from the framework previously before the Court.⁴ For example, Act 900 amended the statutory definitions and enforcement framework that determine the scope, operation, and compliance obligations of Arkansas’s age-verification requirement.

To begin, Act 900 narrowed the definition of “minor” to mean “individual[s] under sixteen (16) years of age who [are] in the State of Arkansas,” Ark. Code Ann. § 4-88-1401(9), replacing the prior definition that covered individuals under eighteen and contained no geographic

⁴ Act 689 of 2023 created the Social Media Safety Act, which has been amended by Act 900 of 2025. *See* Act 689 of 2023, <https://tinyurl.com/4u2jv582>; Act 900 of 2025, <https://tinyurl.com/bfbmd9m2>. The brief will generally cite to the provisions of the Arkansas Code where the Social Media Safety Act has been codified.

limitation. The Arkansas Legislature likewise narrowed the definition of “reasonable age verification” to the process of “confirm[ing] that a person seeking to access a social media platform is at least sixteen (16) years of age,” *id.* § 4-88-1401(10), rather than eighteen. At the same time, Act 900 expanded the definition of “Arkansas user” to include individuals that use a virtual privacy network that gives the appearance they are outside Arkansas when they are, in fact, located within the State. *Id.* § 4-88-1401(2). It also expanded the definition of “account holder” beyond just an individual who “created an account” to any individual who “primarily uses, manages, or otherwise controls an account” or profile used on a social media platform, *id.*, recognizing the reality that children could enlist the help of an older individual to help them create and manage an account. In addition, Act 900 also introduced new definitions for “messaging service” and “digital user community,” *id.* §§ 4-88-1401(8), (6), concepts that did not exist in the prior statutory scheme before the Court.

The Arkansas Legislature also rewrote the definition of “social media platform.” Act 900 replaced it with a functional, activity-based definition covering any “business entity or organization that operates an online platform, application, or service” meeting six enumerated criteria. *Id.* § 4-88-1401(11)(A). Those criteria include that the platform is designed to facilitate user-to-user, user-to-group, or user-to-public interaction; assigns identifiers like username, profile name, or image unique to each user; provides mechanisms for users to create online profiles containing personally identifiable or professional information; allows users to connect or establish relationships with other users; generates revenue primarily through user engagement; and is accessible by Arkansas users. *Id.* § 4-88-1401(11)(A)(i)–(vi). This definition did not exist in the earlier statute reviewed by this Court.

At the same time, Act 900 narrowed the statute's reach by expressly excluding entire categories of entities—including email service providers, not-for-profit organizations, public and private schools, business-to-business software, common carriers, and broadband internet service providers—from the definition of covered platforms. *Id.* § 4-88-1401(11)(B). By contrast, the prior statute excluded only platforms controlled by entities generating less than \$100 million in annual gross revenue.

Beyond redefining who is covered, Act 900 also restructured the obligations imposed on covered platforms. Act 900 added new operational duties governing the design and use of platforms by minors, including default nighttime notification limits, quarterly compliance audits, and a parent-facing dashboard that permits parents to monitor and restrict a minor's use of the platform. *Id.* § 4-88-1402(2)–(4). The Arkansas Legislature further altered the enforcement framework by expanding civil enforcement authority, redefining violations as strict-liability offenses, increasing statutory penalties (from \$2,500 to \$10,000 per violation), *id.* §§ 4-88-1403(c)(1)–(4), and enacting a new provision requiring technological measures to prevent circumvention of age-verification requirements, *id.* § 4-88-1405. Act 900 also created a dedicated Crimes Against Children Fund to support enforcement actions under the Act. Ark. Code Ann. § 19-5-1288(c).

These definitional and structural changes are not peripheral. They determine which platforms are regulated, which users trigger compliance obligations, what age threshold applies, and what constitutes compliance. Critically, none of these definitions, duties, or enforcement provisions were before the Court when it entered its permanent injunction. An injunction directed at a statutory framework defined by materially different terms cannot be mechanically applied to enforcement of a statute that the Court has never evaluated.

As both a textual and practical matter, the statute now in force is not the same law the Court reviewed before issuing its permanent injunction. The age-verification requirement is one component of a revised statutory scheme with newly defined terms, additional compliance mechanisms, and a materially altered enforcement framework. *Supra* 4–7. Independent of any defects in the scope of the prior injunction itself—which the State has appealed—any relief entered related to superseded statutory text cannot be carried forward to restrict enforcement of statutory provisions that were never before the Court.

Here, NetChoice seeks to restrain enforcement of later-enacted statutory provisions without making the showing ordinarily required for injunctive relief—as to the law *presently* in force. NetChoice is mistaken in its argument that “[m]ost of Act 900 is inoperable because it depends on the enforceability of permanently enjoined provisions in Act 689,” PI Br. 12 n. 1; just the opposite is true. Where the governing statutory definitions, compliance obligations, and enforcement framework differ from those addressed in *NetChoice v. Griffin*, No. 5:23-cv-5105, 2025 WL 978607 (W.D. Ark. Mar. 31, 2025), Plaintiffs must demonstrate—as to the *current* statutory framework and record—that they are entitled to injunctive relief.

Nevertheless, NetChoice seeks to extend prior relief—entered with respect to a materially different statutory framework and provisions that are no longer the law—to the revised statutory definitions, operational duties, and enforcement provisions of Act 900. NetChoice makes a two-sentence argument—in a footnote and without citing any legal authority—claiming that “the onus is on the State to persuade this Court (or the Eighth Circuit) to lift or modify the [existing] injunction” and “until that happens, the State cannot enforce parts of Act 900 against NetChoice members.” PI Br. 12, n.1. But without developing that argument in any meaningful way or offering

legal support for that unusual proposition, NetChoice necessarily forfeited or waived that argument. *See Sturgis Motorcycle Rally, Inc. v. Rushmore Photo & Gifts, Inc.*, 908 F.3d 313, 341 (8th Cir. 2018) (“Since [defendants] do not develop their argument beyond” a “single sentence, we hold that they have forfeited it.”); *Milligan v. City of Red Oak*, 230 F.3d 355, 360 (8th Cir. 2000) (assertion without “any argument or legal authority” was waived).

This Court therefore cannot adopt a new preliminary injunction that would prevent enforcement of the age-verification and parental-consent requirements when NetChoice has not even attempted to carry its burden of showing the extraordinary relief of a preliminary injunction is justified as to those provisions. Nor can this Court modify the prior permanent injunction’s scope when that injunction is the subject of an appeal, which divests the Court of jurisdiction over “aspects of the case involved in the appeal,” *Hunter v. Underwood*, 362 F.3d 468, 475 (8th Cir. 2004) (citation omitted), with exceptions that NetChoice has not shown are applicable here, *Liddell v. Bd. of Educ. of City of St. Louis*, 73 F.3d 819, 822 (8th Cir. 1996).

IV. NETCHOICE HAS NOT SHOWN LIKELIHOOD OF SUCCESS ON THE MERITS.

A. Act 900’s Addictive-Practices Provisions.

Act 900’s addictive-practices provisions’ applications are constitutional. These provisions apply to social media platforms’ *conduct*, not their speech. And even if these provisions regulated expressive conduct or speech or some applications burdened expressive conduct or speech, NetChoice cannot demonstrate that the provisions are content-based or that they cannot be justified without reference to the content of the speech. In any event, regardless of whether these provisions regulate speech, they advance important governmental interests that do not substantially burden more speech than necessary to further those interests.

1. *Act 900's addictive-practices provisions, i.e., Arkansas Code Annotated § 4-88-1402(d)(1) & (3), provisions are not overbroad.*

Act 900's addictive-practices provisions do not burden an overwhelming amount of First Amendment speech and are thus not overbroad. And NetChoice is able to argue that Act 900's addictive-practices provisions are overbroad only by misconstruing the statute.

Under Act 900, social media platforms must not “engage in practices to evoke any addiction or compulsive behaviors in an Arkansas user who is a minor, including without limitation through notifications, recommended content, artificial sense of accomplishment, or engagement with online bots that appear human.” Ark. Code Ann. § 4-88-1402(d)(1). In other words, Act 900 prohibits social media platforms from engaging in conduct designed to addict minors to their platform or to cause minors to compulsively check their accounts on the platforms. The Act accomplishes that goal through prohibitions specifically tailored to social media platforms. Some of those prohibitions include purposely evoking an addiction or compulsive behaviors through “notifications, recommended content, artificial sense of accomplishment, or engagement with online bots that appear human.” *Id.* But Act 900's prohibition against engaging in practices intended to cause an addiction or compulsive behavior in minors is not limited to those four categories. The Act provides those categories as examples of different means a social media platform might use to cause a minor to become addicted to their platform. In fact, there are other ways a social media platform could engage in conduct that is violative of these provisions. For example, the Act's addictive practices prohibition could apply to filters, data-collection practices, streaks, endless scroll functions, auto-play features, pull-to-refresh designs, artificial intelligence, and perhaps other applications that have not yet been devised. As explained, *infra* 23–26, these provisions regulate social media platforms' conduct—they do not require social media platforms to speak or to monitor or remove

speech. Indeed, § 1402(d)(1) only considers the social media platform’s state of mind as to its own conduct, not whether it knew if a specific minor would become addicted to its platform as a result of its conduct.

To be sure, Ark. Code Ann. § 4-88-1403(b)(2) states that a violation of subchapter 14 regulating social media is a strict liability civil offense, but NetChoice’s assertion that strict liability applies “so long as a fact-finder determines (with the benefit of hindsight) that one of its practices ‘evoke[s] any addiction or compulsive behaviors’ *in even a single Arkansas minor*—regardless of whether the ‘social media platform’ had any reason to suspect that the practice may cause that (or any other) minor to develop that ‘addiction’ or compulsive behavior[]—misconstrues the statute. Section 4-88-1402(d)(1) indicates that the only conduct prohibited by the statute is that conduct engaged in for the purpose of causing⁵ an addiction in a minor user—prohibiting “social media platform[s] from “engag[ing] in practices *to evoke* any addiction or compulsive behaviors.” *Id.* (emphasis added). “To” is the operative word since is it “used as a function word to indicate purpose, intention, tendency, result, or end.” *To*, Merriam-Webster Online Dictionary (<https://www.merriam-webster.com/dictionary/to>) (last accessed Feb. 12, 2026). So social media platforms are simply prohibited from intentionally engaging in practices that are designed to make users develop an addiction to their platform or related compulsive behaviors. And this prohibition makes sense given the wealth of evidence that platforms have intentionally designed their platforms to be addictive. *See Testimony of Tim Kendall*, House Committee on Energy and Commerce (Sept. 24,

⁵ “[E]voke” means to cause something, to make a particular response occur, or to produce a specific reaction. *See Evoke*, The Britannica Dictionary, <https://www.britannica.com/dictionary/evoke> (last accessed Feb. 12, 2026) (“to cause (a particular reaction or response) to happen”); *Evoke*, Collins Dictionary, <https://www.collinsdictionary.com/us/dictionary/english/evoke> (“to cause it to occur”); *Evoke*, The American Heritage Dictionary, <https://ahdictionary.com/word/search.html?q=evoke> (“[t]o give rise to; draw forth; produce”).

2020) (“[W]e sought to mine as much human attention as possible and turn into historically unprecedented profits. To do this, we didn’t simply create something useful and fun. We took a page from Big Tobacco’s playbook, working to make our offering addictive at the outset.”).⁶

Moreover, Act 900’s strict liability provision does not nullify Chapter 88’s requirement that the addictive-practices provisions “do[] not apply to . . . [b]roadcasters, printers, publishers, and other persons engaging in the dissemination of information who do not have actual knowledge of the intent, design, purpose, or deceptive nature of the . . . practice.” Ark. Code Ann. § 4-88-101(2); *see supra* 4.

Further, reading § 1402(d)(1) and (3) in light of the surrounding provisions about nighttime notifications and dashboards tracking usage, it is clear these provisions are addressing addiction to social media platforms, not addiction to random activities like practicing soccer. *See Jarboe v. Shelter Ins. Co.*, 819 S.W.2d 9, 11 (Ark. 1991) (When a “section is silent on [a] point,[] we refer to context and common sense for direction”); *Clark v. Johnson Reg’l Med. Ctr.*, 362 S.W.3d 311, 316 (Ark. 2010) (“[The Arkansas Supreme Court] will not engage in statutory interpretations that defy common sense and produce absurd results”); *but see* PI Br. 1.

⁶ Printed statement available at <https://tinyurl.com/ykbrejnb>; video available at <https://tinyurl.com/mhx75z88>. *See also, e.g.*, Ex. B-8, Kaliebe Decl. at 11 (“Social media is designed to provide intermittent reinforcement, unlimited scrolling, and curated engagement—all designed to keep young people on the application.”); Ex. B-9, Alter Decl. at 11 (“[S]ocial media platforms are designed to short-circuit the various self-control mechanisms that might otherwise protect the population, en masse, from compulsive overuse.”); Ex. B-10, Radesky Decl. at 31 (“[T]he designs at the root of [social media addictions] are pervasive, are purposeful, and are wholly changeable.”); U.S. Surgeon General’s Advisory, *Social Media and Youth Mental Health* 4 (2023) (explaining that “up to 95% of youth ages 13-17 report using a social media platform, with more than a third saying they use social media ‘almost constantly’”); 9-10 (explaining that “social media exposure can overstimulate the reward center in the brain,” that some studies show “people with frequent and problematic social media use can experience changes in brain structure,” teenagers describe feeling “addicted” to social media and think they are being manipulating); M. Allen, *Sean Parker unloads on Facebook*, Axios (Nov. 9, 2017), <https://www.axios.com/2017/12/15/sean-parker-unloads-on-facebook-god-only-knows-what-its-doing-to-our-childrens-brains-1513306792> (alleging that Facebook is “exploiting a vulnerability in human psychology”).

The same logic applies to § 1402(d)(1)'s language regarding "compulsive behaviors." "[T]he whole-text canon" presumes a "consistent usage" of words in which "a word or phrase" "bear[s] the same meaning throughout the document" and presumes that "associated words bear on one another's meaning" (*i.e.*, *noscitur a sociis*). Scalia, et al. *Reading Law* 168 (2012). That phrase must be interpreted in the same light as "addiction" and must be "defined by the words accompanying it." *Edwards v. Campbell*, 2010 Ark. 398, 5, 370 S.W.3d 250, 253 (2010) (approving the usage of the *noscitur a sociis* doctrine for interpreting statutes). Section § 1402(d)(1) and (3)'s language regarding "addiction" and "compulsive behaviors" is therefore most logically understood as addiction to or compulsive use of social media. Any other interpretation would be impermissible because it would "defy common sense and produce absurd results." *Clark*, 362 S.W.3d at 316. The canon of constitutional avoidance, which applies "in the context of overbreadth challenge," also undercuts NetChoice's interpretation of these terms. *Sisney v. Kaemingk*, 15 F.4th 1181, 1198 (8th Cir. 2021).

The addictive-practices provisions in Act 900 focus on social media platforms' conduct, and those provisions are appropriately tailored to address that conduct. Act 900 is thus not overbroad.

2. Act 900's provisions prohibiting addictive practices regulate social media companies' conduct, not speech.

Act 900's addictive-practices provisions apply to conduct, not speech. These provisions expressly apply to "practices" in § 1402(d)(1) and software and products in § 1402(d)(3).

The First Amendment "'does not prevent restrictions directed at commerce or conduct from imposing incidental burdens on speech.'" *Brandt v. Griffin*, 147 F.4th 867, 888 (8th Cir. 2025) (quoting *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 769 (2018)). Courts

look to whether the regulation “regulates conduct,” what persons or organizations “must *do*,” or whether it regulated “what they may or may not *say*. *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 60 (2006); see *Lichtenstein v. Hargett*, 83 F.4th 575, 579 (6th Cir. 2023) (concluding a prohibition on “distributing a government form” “qualifies as conduct, not speech”). Then “[t]o decide whether conduct is sufficiently imbued with communicative elements to be protected, courts ask whether an intent to convey a particularized message was present and whether the likelihood was great that the message would be understood by those who viewed it.” *Redlich v. City of St. Louis*, 51 F.4th 283, 287 (8th Cir. 2022) (citation modified). In other words, whether the regulated conduct is “inherently expressive.” *Ark. Times LP v. Waldrip as Tr. of Univ. of Ark. Bd. of Trs.*, 37 F.4th 1386, 1394 (8th Cir. 2022) (en banc).

The addictive-practices provisions regulate conduct, not speech. And a multitude of their applications do not even implicate speech or expressive conduct. For example, “[d]esign features of the platforms (such as endless scroll or filters) cannot readily be analogized to mere editorial decisions made by a publisher.” *Social Media Cases*, No. 22STCV21355, 2023 WL 6847378, at *38 (Cal. Super. Oct. 13, 2023). “[T]he design features of” social media “platforms affect how” users “interact with the platforms regardless of the nature of the third-party content viewed by” users. *Id.* And “[i]n some [other] potential applications, *e.g.*, designs that make it difficult to delete one’s account, liability is not premised on a platform’s editorial decisions about third-party content at all,” Doc. 47 (Op.), at 32, or even the platform’s own speech. Other applications focusing on things such as auto-play, infinite scroll, filters, data-collection practices, streaks, pull-to-refresh designs, and artificial intelligence do not implicate speech. Put simply, if a platform implements those features intending to cause an addiction to the platform, that conduct is prohibited.

And even if some of the addictive-practices provisions' applications may involve speech, "the First Amendment is not implicated when the speech 'is plainly incidental to the [law's] regulation of conduct, and it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.'" *Sanderson v. Hanaway*, 163 F.4th 1101, 1106 (8th Cir. 2026) (quoting *Rumsfeld*, 547 U.S. at 62). And though "drawing the line between speech and conduct can be difficult, [the Supreme Court's] precedents have long drawn it." *Becerra*, 585 U.S. at 769 (citing *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949)).

In *Giboney*, Empire Storage operated a cold storage warehouse in Missouri and sold ice at wholesale to peddlers. 336 U.S. at 492. A local union demanded that Empire stop selling ice to nonunion peddlers. *Id.* Empire refused. *Id.* In response, the union began picketing at Empire's place of business with signs indicating that Empire was unfair to organized labor. *Id.* The union's objective was to pressure Empire into agreeing not to sell ice to nonunion peddlers—an arrangement that would have violated Missouri's antitrust laws. *Id.* A Missouri court issued an injunction prohibiting the picketing on the ground that it was aimed at compelling illegal conduct. *Id.* at 494. After considering whether peaceful picketing is protected by the First Amendment when its purpose is to compel a business to engage in conduct that violates state law, the Court upheld the injunction. *Id.* at 504. It held that the union's picketing was part of a broader conduct aimed at violating Missouri's anti-trade restraint law, that "the state's power to govern in this field is paramount, and that nothing in the constitutional guaranties of speech or press compels a state to apply or not to apply its antitrade restraint law to groups of workers, businessmen or others." *Id.*

Just as Missouri’s law did not prohibit the action of picketing, Act 900 does not forbid social media companies from disseminating speech to their users or publishing their users’ speech. It forbids them from engaging in practices for the purpose of causing a minor to become addicted to their platforms. The focus of the addictive-practices provisions is on the conduct of the social media platform. It forbids a platform that has “actual knowledge of the intent, design, purpose, or deceptive nature of the practice,” Ark. Code Ann. § 4-88-101(2), from engaging in that same practice for the purpose of evoking an addiction in minor users in Arkansas, *id.* at § 4-88-1402(d)(1). So even if speech may be implicated when it comes to a platform’s dispersal of notifications, its recommendation of content, or other features, the addictive-features provisions do not categorically prohibit social media platforms from issuing notifications or recommending content.⁷

Instead, the addictive-features provisions forbid those platforms from conducting their business with the purpose of causing their users harm by evoking an addiction to their platforms. This is consistent with the First Amendment.

3. *Even if NetChoice can show that some applications of Act 900’s addictive-practices provisions can apply to speech, the regulation is not content-based or speaker-based.*

Even if NetChoice could show the addictive-practices provisions regulate or burden speech or expressive conduct, the provisions are not content-based. “Content-based laws” “may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). A regulation is content-based if it

⁷ Indeed, without fully understanding NetChoice’s members’ practices, especially when it comes to recommending content, there is not enough evidence showing that their speech will be implicated at all. *See Moody v. NetChoice, LLC*, 603 U.S. 707, 747 (2024) (Barrett, J., concurring) (analysis “is bound to be fact intensive” and “will surely vary from function to function and platform to platform”); *NetChoice, L.L.C. v. Paxton*, 121 F.4th 494, 499 (5th Cir. 2024) (The “second step” in the facial challenge “analysis” “requires a detailed understanding of *how* each covered actor moderates content on each covered platform.”).

“applies to particular speech because of the topic discussed or the idea or message expressed.” *Id.*

“Content-neutral laws, in contrast, ‘are subject to an intermediate level of scrutiny because in most cases they pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue.’” *TikTok Inc. v. Garland*, 604 U.S. 56, 70 (2025) (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994)). “[A] facially content-neutral law is nonetheless treated as a content-based regulation of speech if it cannot be justified without reference to the content of the regulated speech or was adopted by the government because of disagreement with the message the speech conveys.” *TikTok Inc.*, 604 U.S. at 70–71 (quotation omitted).

Though NetChoice argues “while states have an interest in protecting minors from harm, that interest ‘does not include a free-floating power to restrict the ideas to which [they] may be exposed,’” PI Br. 5 (quoting *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 794 (2011)), the addictive-practices provisions do not prevent minors from being exposed to *any* ideas, much less any ideas based on the content of those ideas. Instead, the provisions forbid social media companies from engaging in intentionally harmful conduct designed to make minors addicted to their products, Ark. Code Ann. § 4-88-1402(d)(1) and require them to “ensure” they are not engaging in these harmful practices by conducting a quarterly audit, *id.* at (d)(3). Prohibiting social media platforms from using addictive features is not an attempt to restrict minors’ exposure to any ideas, unlike *Brown*, which involved a content-based regulation that directly burdened expression by prohibiting the “prohibit[ing] the sale or rental of ‘violent video games’ to minors.” 564 U.S. at 789.

The addictive-practices provisions are not content-based for the same reason they are not overbroad. *See supra* 20–23, They regulate practices of social media platforms that are intended

to cause minor users to become addicted to social media. On its face, the addictive-practices provisions are content-neutral.

Further, the addictive-practices provisions can be justified *without* reference to the content of any speech that may be regulated and was not adopted by the Arkansas Legislature because of disagreement with any message conveyed on social media. For example, the addictive-practices provisions are neutral toward what message is conveyed if a platform offers notifications. But it may prohibit a platform from inundating minor users with notifications designed to evoke addiction in those minor users. Again, NetChoice’s argument achieves success only through misconstruction of the statute. But properly construed, even if some of the provisions’ applications can apply to speech, the regulation is not content-based, and at most, intermediate scrutiny applies.

Moreover, Act 900’s addictive practices provisions are not speaker-based regulations either. They “apply equally” to all social media platforms and to the minor speakers who use the platforms. *Reed*, 576 U.S. at 169. But even if they were, “not all speaker-based laws are subject to strict scrutiny.” *NetChoice, LLC v. Bonta*, 152 F.4th 1002, 1017 (9th Cir. 2025) (citing *Reed*, 576 U.S. at 169–70). “A speaker preference is problematic only if it ‘reflects a content preference.’” *Id.* (quoting same). “After all, speaker-based distinctions are suspect only because they ‘are all too often simply a means to control content.’” *Id.* (quoting same).” Even if the addictive-practices provisions draw speaker-based lines by and through other statutory provisions codified elsewhere, these provisions are not speaker-based.

Although NetChoice takes issue with differential treatment between social media and traditional media and news-gathering organizations, PI Br. 17–18, that’s not a content-based difference. It’s instead based on the form of or location of the expression, *see CCIA v. Uthmeier*, No.

25-11881, 2025 WL 3458571, at *4 (11th Cir. Nov. 25, 2025); *Hershey v. Jasinski*, 86 F.4th 1224, 1233 (8th Cir. 2023); *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984), and the dangers attendant to social media, see *Moody*, 603 U.S. at 716, 733 (“novel services” provided by social-media platforms create “unprecedented dangers”: “dangers not seen earlier”); *M.H. v. Omegle.com LLC*, 122 F.4th 1266, 1268 (11th Cir. 2024) (“grave risks to children”). Moreover, assertions underlying NetChoice’s speaker-discrimination argument are false and contradictory. For example, NetChoice claims the Act restricts “only online services that disseminate user-generated speech but allows the exact same types of content” “so long as they offer only provider-generated content.” PI Br. 2. Yet elsewhere NetChoice claims that Act 900 “arguably covers any ad-based website that has a comment box visitors can use.” *Id.* at 38. It likewise acknowledges that entities, subject to the addictive-practices provisions, and those that are not, can post the same video, PI Br. 21, which proves the Act “is agnostic as to content.” *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022).

These provisions do not control content and apply equally to social media platforms across the board.

4. *Even if NetChoice can show that some applications of Act 900’s addictive-practices provisions apply to speech, those provisions pass intermediate scrutiny.*

The addictive-practices provisions survive intermediate scrutiny. Courts will “sustain[] content-neutral law[s] ‘if [they] advance[] important governmental interests unrelated to the suppression of free speech and do[] not burden substantially more speech than necessary to further those interests.’” *TikTok Inc.*, 604 U.S. at 70 (quoting *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 189 (1997)). “[E]ven in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech,” provided “the restrictions ‘are justified without

reference to the content of the regulated speech, . . . are narrowly tailored to serve a significant governmental interest, and[] leave open ample alternative channels for communication of the information.’” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).

Under intermediate scrutiny, “a regulation need not be the least speech-restrictive means of advancing the Government’s interests.” *TikTok*, 604 U.S. at 76 (quoting *Turner I*, 512 U.S. at 662). Courts instead give the Government “latitude” “to design regulatory solutions to address content-neutral interests,” *id.* at 77 (quoting *Turner II*, 520 U.S. at 213), and are “loath to second-guess the Government’s judgment,” *Bd. of Trs. of State Univ. of New York v. Fox*, 492 U.S. 469, 478 (1989). Accordingly, a law’s validity “does not turn on whether [courts] agree with the Government’s conclusion that its chosen regulatory path is best or ‘most appropriate.’” *TikTok*, 604 U.S. at 78 (quoting *United States v. Albertini*, 472 U.S. 675, 689 (1985)).

For one, “there is a compelling interest in protecting the physical and psychological well-being of minors.” *Sable Commc’ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989). Arkansas therefore has a compelling interest in protecting minors from behavioral addictions like social media addiction. *See* Ex. B-11, S. Tereshchenko, *Neurobiological risk factors for problematic social media use as a specific form of Internet addiction: A narrative review* 13 *World J. Psychiatry* 160, 160 (May 19, 2023) (“Problematic social media use (PSMU) is a behavioral addiction, a specific form of problematic Internet use associated with the uncontrolled use of social networks”); Ex. B-12, J. Twenge, *Associations between screen time and lower psychological well-being among children and adolescents: Evidence from a population-based study* (Dec. 2018) (“Across a diverse array of well-being measures, including measures of self-control, relationships with caregivers, emotional

stability, diagnoses of anxiety and depression, and mental health treatment, psychological well-being was progressively lower from 1 h[our] a day of screen time to 7 or more hours a day of screen time, particularly among adolescents.”⁸

Second, NetChoice’s overinclusivity arguments stem from a misinterpretation of the addictive-practices provisions. The Arkansas Legislature tailored the addictive-practices provisions to apply to practices intentionally designed to cause addiction and compulsive behavior in minors. The provisions are not restricting speech. And even if some practices, such as notifications designed to cause minors to be addicted to their social media accounts, were considered to be speech, the notifications are not restricted due to worries the notifications themselves contain “especially compelling” information but because the specific practice of notifications are designed to cause addiction. So NetChoice’s argument that, should the provisions be deemed constitutional, “there is no reason why [Arkansas] could not restrict access to religion on the same theory” is a red herring resulting from a misconstruction of the provisions. PI Br. 20. Arkansas’s “state police powers include the authority to regulate in the interest of public health, including by restricting or prohibiting addictive substances or activities.” Doc. 47 (Op.) at 20 (citing *Minnesota ex rel. Whipple v. Martinson*, 256 U.S. 41, 45 (1921) and *Hawkeye Commodity Promotions, Inc. v. Vilsack*, 486 F.3d 430, 439 (8th Cir. 2007)). That includes regulations targeting practices intended to cause addiction to social media in minors. Act 900 is thus not overinclusive.

⁸ Even Nir Eyal recognizes the danger of engaging in practices intended to cause an addiction in a user: “[H]abits are not the same things as *addictions*. The latter describes persistent, compulsive dependencies on a behavior or substance that harms the user. Addictions, by definition, are self-destructive. Thus, it is irresponsible to make products that rely on creating and maintaining user addictions because doing so would mean intentionally hurting people.” Eyal *Hooked*, at 34.

Third, the addictive-practices provisions are not underinclusive. NetChoice argues that the Act is underinclusive because it does not restrict other streaming services, like HBO Max or Hulu. PI Br. 21. But even assuming NetChoice is correct in arguing that these provisions do not restrict other streaming services, “[a] State need not address all aspects of a problem in one fell swoop; policymakers may focus on their most pressing concerns.” *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 449 (2015). And “the First Amendment poses no freestanding underinclusiveness limitation.” *TikTok*, 604 U.S. at 76 (quoting *Williams-Yulee*, 575 U.S. at 449). Moreover, social media platforms are not similarly situated to those other media types.

Fourth, though NetChoice argues that “[p]arents already have ample tools at their disposal to protect minors on the Internet and social media websites,” PI Br. 21, those tools are largely ineffective. Ex. B-6, Przybylski & V. Nash, *Internet Filtering* (“[F]ilters might have small protective effects, but evidence derived from a more stringent and robust empirical approach indicated that they are entirely ineffective.”).⁹ And while NetChoice brushes its hand by arguing parents can just figure it out for themselves so Arkansas is somehow forbidden from regulating in this arena, that is not the test for intermediate scrutiny. *Supra* 29–30.

As explained, § 1402(d)(1) specifically takes into consideration the platform’s knowledge as to whether they are engaging in practices designed to evoke addiction in their minor users. While speech may be implicated, it is not directly regulated by this provision. At most, the Act regulates based on “*form of expression, not a subject matter*,” *CCIA*, 2025 WL 3458571, at *4, and based

⁹ See also J. Jargon, *Apple Admits to Bug in Screen Time Parental Controls* (July 29, 2023), (https://www.wsj.com/tech/personal-tech/apples-parental-controls-are-broken-55a2aa52?mod=article_inline); *Top 8 Ways Kids Can Bypass Parental Controls and How to Stop Them* (Dec. 29, 2023), (<https://medium.com/@susan.larcom/top-8-ways-kids-can-bypass-parental-controls-and-how-to-stop-themc7461ceb783a>); B. Greenfield, *Parents are worried about their kids’ smartphone use—but less than half fully utilize parental controls, research finds* (May 29, 2025) (<https://fortune.com/well/2025/05/29/parental-controls-kids-smartphone-social-media/>).

on the dangers attendant to social media, *see Moody v. NetChoice, LLC*, 603 U.S. 707, 716 (2024) (“novel services” provided by social-media platforms create “unprecedented dangers”); *id.* at 733 (“today’s social media pose dangers not seen earlier”); *M.H. v. Omegle.com LLC*, 122 F.4th 1266, 1268 (11th Cir. 2024) (“[S]ocial media in particular pose grave risks to children.”).

Fifth, as explained, *supra* 21–22, NetChoice misconstrues the strict liability provision in § 1403. That provision does not negate the specific condition in § 1402(d)(1) that imposes a pre-requisite to a finding of liability: that the purpose of the platform’s practice be to evoke addiction in its minor users.

Sixth, contrary to NetChoice’s assertion, the addictive-practices provisions do not discriminate in favor of “news.” *See* PI Br. 17–18. Social media platforms, as defined by Arkansas Code Annotated § 4-88-1401(11)(A) and (B), must abide by Act 900’s requirements regarding addictive practices even if they disseminate news on their platforms. Section 1403(d)’s carveout only applies to § 1403—not § 1402—since it explicitly limits its operation to “[t]his section,” *i.e.*, § 1403. And even if the Court found this provision to be unconstitutional, Act 900 has a severability clause that would prevent the validity of Act 900’s constitutional portions from being affected.

Act 900’s addictive-practices provisions are sufficiently tailored to survive intermediate scrutiny.

5. NetChoice has not met its burden to show a substantial number of applications of Act 900’s addictive practices provisions are unconstitutional compared to its plainly legitimate sweep.

NetChoice has not even come close to meeting its burden to prevail on a facial challenge. It messily paints with a broad brush, arguing that the addictive-practices provisions “are facially invalid because *all* of their applications are unconstitutional.” PI Br. 22 (emphasis in original). But again, NetChoice can only see success on its facial challenge by misconstruing these provisions and

ignoring the Act’s plain text and the text of other related statutes. “NetChoice chose to litigate [this] case[] as [a] facial challenge[], and that decision comes at a cost.” *Moody*, 603 U.S. at 723. There are a multitude of reasons why “courts usually handle constitutional claims case by case,” not least among them being that “[c]laims of facial invalidity often rest on speculation’ about the law’s coverage and its future enforcement.” *Id.* (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008)). “And ‘facial challenges threaten to short circuit the democratic process’ by preventing duly enacted laws from being implemented in constitutional ways.” *Id.* (quoting *Wash. State Grange*, 552 U.S. at 451). So “[i]nvalidating a law on this basis should only be done as ‘a last resort’” as “facial challenges involve a heightened risk of a premature interpretation of a statute based on a barebones record.” *GLBT Youth in Iowa Schs. Task Force v. Reynolds*, 114 F.4th 660, 669 (8th Cir. 2024) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973)). And this is especially true at the preliminary injunction stage where “[a] preliminary injunction must be narrowly tailored to remedy only the specific harms shown by the plaintiffs, rather than to enjoin all possible breaches of the law.” *Dakotans for Health v. Noem*, 52 F.4th 381, 392 (8th Cir. 2022) (quotation omitted). Facial challenges are thus “hard to win.” *Id.*

NetChoice cannot therefore succeed on its facial challenge unless it shows that “a substantial number of its applications are unconstitutional, judged in relation to” the addictive-practices provisions’ “plainly legitimate sweep.” *Reynolds*, 114 F.4th at 669 (quotation omitted). And it is neither Defendants’ nor the Court’s burden to make that showing; the burden belongs to NetChoice. *See NetChoice, L.L.C. v. Paxton*, 121 F.4th 494, 500 (5th Cir. 2024) (“It is plaintiffs’ burden to develop a factual record to support their request for facial injunctive relief against enforcement of a state statute”); *Bonta*, 152 F.4th at 1013 (“A facial challenge requires a different—

and more stringent—analysis that demands record development on third-party speech and the full scope of a law’s potential applications. It is NetChoice’s burden to make those showings.”). NetChoice therefore bears the burden of showing unconstitutional applications outweigh the constitutional ones. Defendants do not have the burden of proving the inverse or of shoring up examples of hypothetical applications, *contra* PI Br. 23, especially where NetChoice’s members are the best equipped to answer questions about their own conduct surrounding their platforms.

It has not satisfied its burden. And though it is unnecessary for Defendants to do so, there are plenty of constitutional applications that are readily identifiable. For example, functions like autoplay and infinite scroll do not even implicate speech or expressive conduct.

Further, the addictive-practices provisions “might apply to, and differently affect, other” social media platforms besides NetChoice’s own members. *Moody*, 603 U.S. at 718. But more importantly here, these provisions almost certainly apply differently to each of NetChoice’s own members. *See id.*, at 747 (Barrett, J., concurring) (an analysis of “a social-media company’s invocation of its First Amendment rights” “is bound to be fact intensive, and it will surely vary from function to function and platform to platform”). Without knowing “the full range of activities” that Act 900 covers, NetChoice cannot prevail on its facial challenge. *Id.* at 708 (majority opinion).

B. Act 900’s Default Privacy and Notification Setting Requirements.

Act 900’s default notification and privacy setting requirements, codified at Arkansas Code Annotated § 4-88-1402(d)(2)(A) & (B), impose conditions on social-media companies’ conduct when comes to minors. They do not regulate speech. But even if NetChoice were able to demonstrate that they do, they are not content-based restrictions on speech, are appropriate time/place/manner restrictions, and are sufficiently tailored to survive intermediate scrutiny.

1. *Act 900's default privacy and notification settings regulate social media platforms' conduct, not speech.*

Act 900's default privacy and notification settings regulate social media platforms' conduct, not their speech. Further, the First Amendment rights of children are not coextensive with adults. *See Erznoznik v. City of Jacksonville*, 422 U.S. 205, 214 n.11 (1975) (“First Amendment rights of minors are not ‘co-extensive with those of adults’” and age “is a significant factor”). And, as explained, NetChoice cannot establish standing to assert users' First Amendment rights by combining associational standing and third-party standing in this fashion to create “a hybrid-type of third-party derivative standing.” *Penn. Psychiatric Soc.*, 280 F.3d at 294 (Nygaard, J., dissenting).

Default privacy setting.

Act 900's default privacy setting requires social media platforms to “[e]nsure that, by default . . . [p]rivacy and safety settings for an Arkansas user who is a minor on a covered social media platform provides the most protective level of control for privacy and safety offered by the covered social media platform.” Ark. Code Ann. § 4-88-1402(d)(2)(B). Importantly, this provision does not require social media platforms to provide anything new for their minor users—just that they set by default minors' privacy and safety settings to whatever most protective settings they *already offer*. Yet NetChoice protests, arguing “the practical effect of the provision is to ‘alter[]’ the mix of speech that users can see and engage with on the website.” PI Br. 25 (quoting *Moody*, 603 U.S. at 732). But Arkansas can place restrictions on entities' relationships with minors,¹⁰ especially

¹⁰ For example, because children working in the entertainment industry are particularly susceptible to abuse, manipulation, exploitation, and power imbalances, California (as well as several other states) imposes conditions on parties wishing to enter into certain contracts with minors for the purpose of, among other things, “render[ing] artistic or creative services.” Cal. Fam. Code § 6750(a)(1).

restrictions that are intended to protect minors from exploitation and abuse. *See Prince v. Massachusetts*, 321 U.S. 158, 168 (1944) (“The state’s authority over children’s activities is broader than over like actions of adults”). It is also impossible to know at this stage what privacy and safety settings each social media platform already offers because Act 900 specifically tailors this requirement to each individual platform. There is no way to know the practical effect of this provision without the individual participation of the platforms themselves. And, as explained, there is no way to tell whether those applications are unconstitutional because NetChoice has not met its burden to prevail on its facial challenge. *Supra* 33–35.

Further, even if the practical effect of this provision can be determined, *Brown* does not help NetChoice. For starters, what NetChoice calls a holding about a child’s “right to speak or be spoken to without their parents’ consent,” PI Br. 25–26, is dicta. 564 U.S. at 795 n.3. That’s because the challenged law was a complete prohibition on renting or selling violent video games to minors—regardless of parents’ permission. *Id.* at 789. Regardless, the Supreme Court never said minors’ right to receive (or express) speech without their parents’ consent (against parents’ wishes) was unlimited, nor can that possibly be true regarding young children, especially given “parents have traditionally had the power to control what their children hear and say.” *Id.* at 795 n.3. Moreover, *Brown* was a content-based restriction on speech, triggering strict scrutiny, *id.* at 799, and a direct attempt to prohibit children’s exposure to “ideas or images” (violent video games) regardless of parents’ views, *id.* at 794–95. The same is not true here.

Default notification setting.

Act 900’s default notification setting requires social media platforms to “[e]nsure that, by default . . . [n]otifications to an Arkansas user who is a minor, other than safety or privacy-related

alerts, are ceased between the hours of 10:00 p.m. central standard time (CST) and 6:00 a.m. central standard time (CST) and allow a parent or guardian to modify this setting.” Ark. Code Ann. § 4-88-1402(d)(2)(A). When minors use social media at nighttime, their emotional well-being and sleep quality suffers. Ex. B-13, H. Woods, *#Sleepyteens: Social media use in adolescence is associated with poor sleep quality, anxiety, depression and low self-esteem* 51 J. Adolescence 47 (2016) (“Consistent with previous research, higher levels of social media use were associated with poorer sleep quality, lower self-esteem and increased anxiety and depression.”); *id.* (“[N]ight-time specific social media use and emotion investment in social media were both associated with poorer sleep quality, lower self-esteem and higher anxiety and depression levels. Nighttime-specific social media use predicted poorer sleep quality, controlling for anxiety, depression and self-esteem.”); Ex. B-14, J. Levenson, *The association between social media use and sleep disturbance among young adults* (2016) (“The rate of [social media] use has been growing rapidly in recent years. Additionally, disturbed and insufficient sleep has been associated with poor health outcomes. Thus, the strong association between [social media] use and sleep disturbance has important clinical implications for the health and well-being of young adults.”). Further, when social media platforms disperse push notifications, they are not creating expressive editorial speech but disseminating functional system outputs. These notifications are typically automated alerts, generated by algorithms, and triggered by user activity or platform engagement design.

Act 900’s default notification requirement is simply another way Arkansas is regulating social media platforms’ harmful conduct when it comes to minors—especially since the evidence shows children are susceptible to harm specifically in the context of nighttime social media usage.

The default notification provision is targeted towards social media platforms' conduct, not expression that happens to occur on social-media platforms.

2. *Even if speech is regulated, the default notification provision is a content-neutral time, place, and manner restriction on speech.*

Act 900's default notification and privacy setting requirements do not regulate speech, but conduct. But even if this Court finds that the provision regulates speech, the provision is a reasonable "time, place, and manner restriction on speech" that "serves a substantial governmental interest and does not unreasonably limit alternative avenues of communication." *Rice v. Kempker*, 374 F.3d 675, 680 (8th Cir. 2004) (quotation omitted). The provision does not "prevent" NetChoice's members "from disseminating to the public any information" exchanged on social media. *Id.* at 681. It simply regulates the time in which that information can be disseminated. And the provision "is aimed not at the *content* of the" notifications disseminated by social media platforms "but rather the *secondary effects*" of those notifications on minor users at nighttime. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 47 (1986).

Further, for the same reasons articulated above, *supra* 26–29, the default notification provision is neither content- nor speaker-based.

3. *Act 900's default notification and privacy setting requirements survive heightened scrutiny.*

Should the Court nevertheless find that Act 900's default notification and privacy setting requirements regulate speech, they each survive heightened scrutiny. As previously stated, Arkansas has "a compelling interest in protecting the physical and psychological well-being of minors." *Sable*, 492 U.S. at 126. And states have an equally compelling interest in supporting parents in their "discharge" of their responsibility "to direct the rearing of their children" and to protect their children. *Ginsberg v. State of New York*, 390 U.S. 629, 639 (1968); *see Pierce v. Soc'y of the*

Sisters, 268 U.S. 510, 535 (1925) (“The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”). Because parents have primary authority for the well-being of their children, States have a legitimate interest in empowering parents and “reinforc[ing] parental decisionmaking.” *Brown*, 564 U.S. at 815 (Alito, J., concurring);¹¹ see *Schall v. Martin*, 467 U.S. 253, 265 (1984) (explaining that “if parental control falters, the State must play its part as *parens patriae*”).¹²

Further, neither regulation “burden[s] substantially more speech than necessary to further those interests.” *TikTok Inc.*, 604 U.S. at 70 (quotation omitted).

Default privacy setting.

First, as explained, *supra* 4, 32, the parental control tools already provided to parents are largely ineffective. And though NetChoice argues parents “may refuse to give their children smartphones, tablets, or computers in the first place,” PI Br. 28, that is unrealistic since “in 2024, 95 percent of American teens had access to a smartphone, allowing many to access the internet at

¹¹ The *Brown* majority questioned whether the challenged law was an appropriate means of assisting parental authority, but it also questioned what “parents of the restricted children actually want” and believed parents already had adequate tools to “evaluate the games their children bring home.” *Id.* at 803–04. Here, parents cannot prevent their children from creating or accessing social-media accounts given the ubiquity of smartphones and other devices that they can access, including school computers and friends’ devices, see *Paxton*, 606 U.S. at 491, and the ineffectiveness of internet filters, see Ex. B-6, Przybylski, *Internet Filtering* at 406. Regardless, the *Brown* Court applied strict scrutiny given that law’s content-based nature, 564 U.S. at 799, whereas intermediate scrutiny, at most, is the proper standard here.

¹² Indeed, to the extent these provisions apply to minor accountholders, the regulations operate as a reasonable limitation on social media platforms’ ability to contract with minors. Restrictions on contracts, especially contracts with children who have “peculiar vulnerability” and different constitutional rights than adults, *Bellotti v. Baird*, 443 U.S. 622, 634 (1979), have a well-established historical pedigree. See *J.D.B. v. North Carolina*, 564 U.S. 261, 273 (2011) (recognizing that the “law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment” and “[l]egal disqualifications on children as a class,” including their inability to enter contracts); *Nat’l Rifle Ass’n v. Bondi*, 133 F.4th 1108, 1118 (11th Cir. 2025) (en banc) (discussing how contracts with children were often not permissible and that children do not have the same legal rights as adults); see also *Brown v. Ent. Mer-chants Ass’n*, 564 U.S. 786, 832–33 (Thomas, J., dissenting) (explaining that parents historically had authority to contract his child’s labor and services out to others). Yet they have “coexisted with the First Amendment” without “a cause for constitutional concern.” *Vidal v. Elster*, 602 U.S. 286, 295–96 (2024).

almost any time and place.” *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 497–98 (2025). Even if a parent refuses to give their children an internet-capable device, their children could easily borrow a friend’s. What’s more, some children likely need to access the internet to complete school assignments.

Second, the provision only requires social media platforms to set by default the most “protective level of control for privacy and safety” that is *already* “offered by the covered social media platform.” Ark. Code Ann. § 4-88-1402(d)(2)(B). It does not impose a new standard for privacy settings. It simply requires what social media platforms have already determined to be feasible to offer in terms of privacy and safety.

Default notification setting.

NetChoice argues that this provision is overinclusive “because it restricts minors from accessing wide swaths of protected speech even if the content is entirely innocuous.” PI Br. 29. But that is wrong. This provision does not prohibit minors from accessing speech *at all*. At most, the Act regulates based on “*form* of expression, not a *subject matter*,” *CCIA*, 2025 WL 3458571, at *4. If a minor truly wished to “know the final score of a World Series game that goes late into the night because of extra innings,” PI Br. 29, they could seek that information out through whatever alternative channel of communication is available to them on the social media platform itself or elsewhere. The provision survives heightened scrutiny because, at most, it amounts to a time, place, and manner restriction that leaves minors free to access the same information regardless of its content through another means.

In any event, if NetChoice is arguing speech can never be directly regulated to advance a compelling interest, that is wrong. *See Sable Commc’ns*, 492 U.S. at 126 (“The Government may,

however, regulate the content of constitutionally protected speech in order to promote a compelling interest.”). The Eighth Circuit has recognized that a governmental entity “may constitutionally restrict” protected speech where it can “come forward with empirical support for its belief” that the speech “cause[s] psychological harm to minors.” *Interactive Digital Software Ass’n v. St. Louis County*, 329 F.3d 954, 959 (8th Cir. 2003). And here, the default notification provision functions as a bar on social media platforms’ conduct for the purpose of limiting the platforms’ ability to initiate interactions with minors at a time when they are more susceptible to harm. *See* Exs. B-13, B-14. The statute’s exception for “safety or privacy-related alerts” is therefore necessary to narrowly tailor the statute so that its purpose may be achieved. Indeed, without this exception the statute could not be narrowly tailored because cutting off those kinds of notifications is likely to cause more harm to minors than the harm the provision seeks to alleviate.

Further, Act 900 uniquely applies to social media because social media is just that—unique. And even if other forms of media pose adjacent concerns, “[a] State need not address all aspects of a problem in one fell swoop; policymakers may focus on their most pressing concerns.” *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 449 (2015). And as the evidence shows throughout, social media platforms’ exploitation of minors is the most pressing concern that Act 900 seeks to address. In any event, the Act’s current definition of social media platform does not exclude user-to-user services, Ark. Code Ann. § 4-88-1401(11)(A)(i), which further undermines NetChoice’s reasoning.

4. *NetChoice’s facial challenge fails*

NetChoice’s facial challenge fails. If NetChoice believes that the privacy setting provision restricts “what speech [minors] can engage in,” PI Br. 30, as applied just to its members, it should have brought an as-applied challenge. But it did not. And as explained, *supra* 33–34, it cannot meet

its burden to prevail on a facial challenge without providing the Court with *all* of Act 900’s applications, and for largely the same reasons argued above, *supra* 34–35, it has not met its burden to prevail on a facial challenge here. NetChoice argues that Act 900 “*could* include restrictions on what content a minor can view, who they can interact with, and what speech they can engage in.” PI Br. 30. But acknowledging that the law could apply in a vast array of circumstances is not enough to satisfy the facial challenge burden. It is NetChoice’s burden to supply the Court with each of these possible applications and facts (not speculation) to support them so that the Court need not decide its motion on a barebones record. NetChoice has not done that here.

C. Act 900’s Dashboard Requirement.

Act 900’s dashboard requirement is consistent with *Zauderer* and is sufficiently tailored to survive heightened scrutiny.

1. Act 900’s dashboard requirement is consistent with the Zauderer and the cases that have been handed down since

Act 900’s dashboard requirement does not compel speech inconsistent with the Supreme Court’s holding in *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985). Under that standard, Arkansas may require social media platforms disclose “purely factual and uncontroversial information about the terms under which [their] services will be available.” *Zauderer*, 471 U.S. at 651. And that requirement need not be constrained to deception in the “commercial advertising context,” PI Br. 32: “*Zauderer* in fact does reach beyond the problems of deception.” *Am. Meat Inst. v. U.S. Dep’t of Agric.*, 760 F.3d 18, 20 (D.C. Cir. 2014).¹³

¹³ *American Meat Institute* cites several other cases for the proposition that “*Zauderer*’s characterization of the speaker’s interest in opposing forced disclosure of such information as ‘minimal’ seems inherently applicable beyond the problem of deception,” including: *N.Y. State Rest. Ass’n v. N.Y. City Bd. of Health*, 556 F.3d 114, 133 (2d Cir.2009); *Pharm. Care Mgmt. Ass’n v. Rowe*, 429 F.3d 294, 310 (1st Cir.2005) (Torruella, J.); *id.* at 316 (Boudin, C.J. & Dyk, J.); *id.* at 297–98 (per curiam) (explaining that the opinion of Chief Judge Boudin and Judge Dyk is

In *Becerra*, the Supreme Court considered whether legislation requiring crisis pregnancy centers to “notify women that California provides free or low-cost services, including abortions, and give them a phone number to call.” 585 U.S. at 755. While the Court did not uphold the statute, its holding regarding *Zauderer* did not turn in favor of the pregnancy centers because the notification at issue was not speech in the “commercial advertising context.” PI Br. 32. The Court held that “[u]nlike the rule in *Zauderer*, the licensed notice is not limited to ‘purely factual and uncontroversial information about the terms under which . . . services will be available.’” *Becerra*, 585 U.S. at 756 (quoting *Zauderer*, 471 U.S. at 651). “California’s notice requires covered clinics to disclose information about *state*-sponsored services—including abortion, hardly an ‘uncontroversial’ topic.” *Id.* So, *Zauderer* had no application in *Becerra* not because it wasn’t speech in the “commercial advertising context” but because the message was not “uncontroversial.” In *American Meat Institute*, the D.C. Circuit upheld a disclosure requirement of country-of-origin information about meat products because “the interests invoked” by the Department of Agriculture were “sufficient” “to sustain a disclosure mandate under *Zauderer*.” 760 F.3d at 27. *See also Pharm. Care Mgmt. Ass’n v. Rowe*, 429 F.3d 294, 309–10 (1st Cir. 2005) (upholding as constitutional under *Zauderer* a statute requiring routine disclosure of economically significant information designed to forward the ordinary regulatory purposes of protecting covered entities from questionable business practices).

It naturally follows here that Act 900’s requirement that social media platforms “[d]evelop an easily accessible online dashboard to allow a parent of a minor user to view and understand his or her child’s use habits on the covered social media platform” is consistent with the *Zauderer*

controlling on the First Amendment issue); *Nat’l Elec. Mfrs. Ass’n v. Sorrell*, 272 F.3d 104, 113–15 (2d Cir.2001). 760 F.3d at 22.

standard. Ark. Code Ann. § 4-88-1402(4)(A). Social media platforms need only disclose purely factual, noncontroversial information detailing their minor users' usage habits. Nothing else. And though NetChoice contends that this provision “does not involve a ‘commercial transaction’ at all,” PI Br. 34, that is wrong. Under § 1401(11)(A)'s definition of “[s]ocial media platform,” entities regulated by Act 900 “[g]enerate[] [their] revenue primarily through user engagement, including without limitation through advertising, user data monetization, or premium content.” The inherent relationship between social media platforms and their users is commercial because the platforms' economic survival depends on users using their platforms. And a requirement to disclose minor users' usage habits creates transparency and wards off deception in a realm where an entity's profit is intrinsically tied to usage.

2. Act 900's dashboard requirement passes the scrutiny established in Zauderer.

Section 1402 survives intermediate scrutiny. Importantly, under *Zauderer*, “unjustified or unduly burdensome disclosure requirements *might* offend the First Amendment by chilling protected commercial speech.” 471 U.S. at 651 (emphasis added). Arkansas Code Annotated § 1402(d)(4)(A) requires social media platforms to “[d]evelop an easily accessible online dashboard to allow a parent of a minor user to view and understand his or her child's use habits on the covered social media platform.” This is not a one-time disclosure for a minor who visits a platform only once and is unidentifiable from that visit. The dashboard requirement is aimed at tracking the “habits” of minors—“a settled tendency or usual manner of behavior” or “an acquired mode of behavior that has become nearly or completely involuntary.” *Habit*, Merriam Webster Dictionary (<https://www.merriam-webster.com/dictionary/habit>) (last accessed Feb. 16, 2026). This does not nearly pose as great a burden as NetChoice alleges. But even if it did, any relief granted

NetChoice should be tailored only to apply to minors who are not accountholders. It has not come close to showing a substantial burden as to those minor accountholders. For a similar reason, NetChoice’s facial challenge here fails, too. Like Act 900’s other provisions against which NetChoice brings a facial challenge, there are not enough facts here for NetChoice’s challenge to prevail. Even if NetChoice is able to show that the provision would be unconstitutional as applied to social media platforms that allow access to the platform without creating an account, it has not shown that there are not other social media platforms that limit access to accountholders.

D. Because NetChoice has not shown that Act 900 fails to provide fair notice of what is prohibited or is standardless, it has not shown that it is likely to succeed on its due process claim.

Act 900 is not impermissibly vague. For a statute to be unconstitutionally vague, it must “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited,” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972), or be “so standardless that it authorizes or encourages seriously discriminatory enforcement,” *United States v. Williams*, 553 U.S. 285, 304 (2008). “[P]erfect clarity and precise guidance” are not “required even of regulations that restrict expressive activity.” *Ward*, 491 U.S. at 794. Moreover, a “knowledge requirement” in a statute “reduces any potential for vagueness.” *Holder v. Humanitarian L. Project*, 561 U.S. 1, 21 (2010).

Act 900 is sufficiently clear about what “practices to evoke any addiction” it prohibits.

“[A] regulation is not vague because it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved.” *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). In other words, “regulated parties should know what is required of them so that they may act accordingly.” *Id.* Act 900 tells social media platforms precisely how they are to act—without the purpose of causing addiction in their minor users. As

explained, Act 900’s addictive-practices provisions only prohibit practices a platform continually engages in “to evoke addiction.” *Supra* 20–26; Ark. Code Ann. § 4-88-1402(d)(1). That requires the social media platform to have the “actual knowledge of the intent” to cause addiction. Ark. Code Ann. § 4-88-101(2). For that same reason, NetChoice misconstrues the statute by arguing that a social media platform must know “if a practice allegedly caused a *visitor* to develop an ‘addiction,’” PI Br. 39, because the social media platform need only have actual knowledge of its own intent motivating its own conduct.

And Act 900 gives clear qualitative guidance for defining “addiction.” It must be informed by “contemporary understanding[s] of addiction, compulsory behavior, and child cognitive development.” Ark. Code Ann. § 4-88-1402(d)(1).¹⁴ Further, as explained, *supra* 23, the “practices to evoke addiction” proscribed by Act 900 only include addiction to the social media platform itself. Though NetChoice argues that Act 900 “appears to prohibit Facebook from recommending a video of Messi scoring a goal so long as a fact-finder concludes that it evoked ‘any addiction or compulsive behaviors’ in a minor by causing him or her to obsessively practice soccer every day,” it is wrong on at least two accounts. Reading § 1402(d)(1) and (3) in light of the surrounding provisions about nighttime notifications and dashboards tracking usage, it is clear these provisions are addressing addiction to social media platforms, not addiction to random activities like practicing

¹⁴ Ex. B-15, S. Giraldo-Luque, et al., *The Struggle for Human Attention: Between the Abuse of Social Media and Digital Wellbeing* (Nov. 19, 2020) (“Guided by the control of users’ attention, the consumption figures for digital environments, mainly social media, show that addictive use is associated with multiple psychological, social, and physical development problems”); Ex. B-16 D. Kruger, *Social media copies gambling methods ‘to create psychological cravings’* (May 8, 2018) (“These methods are so effective they can activate similar mechanisms as cocaine in the brain, create psychological cravings and even invoke ‘phantom calls and notifications’ where users sense the buzz of a smartphone, even when it isn’t really there.”); Ex. B-17, A. Hunt, *Evolutionary perspectives on substance and behavioural addictions: Distinct and shared pathways to understanding, prediction, and prevention* (2024) (discussing the Bergen Social Media Addiction Scale and stating “[s]ocial media addiction” “has been widely studied as a maladaptive psychological dependency to the extent that behavioural addiction symptoms occur”).

soccer. *See Jarboe v. Shelter Ins. Co.*, 819 S.W.2d 9, 11 (Ark. 1991) (When a “section is silent on [a] point,[] we refer to context and common sense for direction”); *Clark v. Johnson Reg’l Med. Ctr.*, 362 S.W.3d 311, 316 (Ark. 2010) (“[The Arkansas Supreme Court] will not engage in statutory interpretations that defy common sense and produce absurd results”); *but see* PI Br. 1.

The same logic applies to § 1402(d)(1)’s language regarding “compulsive behaviors.” “[T]he whole-text canon” presumes a “consistent usage” of words in which “a word or phrase” “bear[s] the same meaning throughout the document” and presumes that “associated words bear on one another’s meaning” (*i.e.*, *noscitur a sociis*). Scalia, et al. *Reading Law* 168 (2012). That phrase must be interpreted in the same light as “addiction” and must be “defined by the words accompanying it.” *Edwards v. Campbell*, 2010 Ark. 398, 5, 370 S.W.3d 250, 253 (2010) (approving the usage of the *noscitur a sociis* doctrine for interpreting statutes). Section § 1402(d)(1) and (3)’s language regarding “addiction” and “compulsive behaviors” is therefore most logically understood as addiction to or compulsive use of social media. Any other interpretation would be impermissible because it would “defy common sense and produce absurd results.” *Clark*, 362 S.W.3d at 316. Act 900’s prohibition on “addictive practices” operates as a prohibition on engaging in “practices to evoke any addiction” to the social media platform, not to whatever arbitrary hobby NetChoice hypothesizes. Moreover, Act 900 prohibits social media platforms from engaging in “addictive *practices*.” Ark. Code Ann. § 4-88-1402(d)(1) (emphasis added). This is not a one-time suggestion but a continual act in which the platform engages. And as previously explained, “to ‘evoke,’” as used in Act 900, is not broader than “to cause.” *Supra* 21 n.5.

Act 900 provides websites with adequate notice of who is subject to its requirements.

Arkansas Code Annotated § 4-88-1401(11) defines “social media platform” based on six objective characteristics and exclusions, which provide fair notice of what entities are subject to Act 900’s provisions. But NetChoice does not identify which characteristics of a social media platform it believes are vague or ambiguous. Its primary protest is that “Act 900 seemingly sweeps in countless websites that are not traditionally considered ‘social media platforms’ and likely do not consider themselves such.” PI Br. 38–39. But just because NetChoice’s definition for what constitutes a social media platform differs from Arkansas’s does not make § 1401(11)’s definition vague. NetChoice also fails to identify a single member who is uncertain whether the Act’s requirement apply to them under § 1401(11)’s definition. This is fatal because whether a statute is vague is not assessed in the abstract. *See Holder*, 561 U.S. at 20 (explaining “the rule” is that “[a] plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others” and there is “no exception for conduct in the form of speech”); *Adam & Eve*, 933 F.3d at 959 (explaining that a “vagueness challenge” does not permit a plaintiff to ‘speculat[e] about possible vagueness in hypothetical situations not before the Court’” and that, because “[i]t is undisputed that a substantial portion of [the plaintiff’s] business involves selling items the statute reaches,” the plaintiff’s “vagueness challenge falls apart” (quoting *Hill v. Colorado*, 530 U.S. 703, 733 (2000))).

V. NETCHOICE HAS NOT SHOWN IRREPARABLE HARM IS LIKELY.

Not only has NetChoice failed to show a substantial likelihood that it will prevail on the merits, it has also failed to show it will likely suffer irreparable harm in the absence of a preliminary injunction.

To establish irreparable harm, plaintiffs “must show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief.” *Powell v. Noble*, 798 F.3d 690, 702 (8th Cir. 2015) (quoting *S.J.W. ex. Rel. Wilson v. Lee’s Summit R-7 Sch. Dist.*, 696 F.3d 771, 78 (8th Cir. 2012)). And although “[i]t is well-established that ‘[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury,’” a plaintiff who has failed to show it is likely “his First Amendment rights have been violated” has also failed to show “a threat of irreparable harm that warrants preliminary injunctive relief.” *Id.* (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))

Because Act 900 does not violate the First Amendment and NetChoice has not shown it is substantially likely to prove otherwise, it has necessarily not shown that it will suffer irreparable harm without injunctive relief. *See id.* At the very least, NetChoice has not shown that the alleged harms are imminent, clear, and present. A social media company is liable under Act 900 only if it has “actual knowledge of the intent, design, purpose, or deceptive nature” or its “practice.” Ark. Code Ann. § 4-88-101(2). More specifically, a social media company is liable when it engages in practices specifically designed “to evoke any addiction” in its minor users. Ark. Code Ann. § 4-88-1402(d)(1). NetChoice does not allege, much less show that its members intend to violate Act 900. As such, they have failed to show that any risk of enforcement is imminent absent an injunction and thus have failed to show that any purported chill on their speech is imminent. All NetChoice offers is “speculative harm,” which is insufficient to “support a preliminary injunction.” *S.J.W.*, 696 F.3d at 779.

NetChoice also alleges irreparable harm in the form of unrecoverable compliance costs; however, that assertion is based on a clear misreading of Act 900. Plaintiff argues that Act 900 will

force NetChoice members to spend large amounts of resources on irrecoverable compliance costs.” PI Br. 40. But again, NetChoice’s members need not change their practices if they are not designed to evoke any addiction in their minor users. Further, it has not identified what changes it believes its members will need to make or what that will cost them.

And “ordinary compliance costs are typically insufficient to constitute irreparable harm.” *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 115 (2d Cir. 2005); *see Am. Hosp. Ass’n v. Harris*, 625 F.2d 1328, 1331 (7th Cir. 1980) (“[I]njury resulting from attempted compliance with government regulation ordinarily is not irreparable harm.”); *see also A. O. Smith Corp. v. F. T. C.*, 530 F.2d 515, 527 (3d Cir. 1976) (“Any time a corporation complies with a government regulation that requires corporation action, it spends money and loses profits; yet it could hardly be contended that proof of such an injury, alone, would satisfy the requisite for a preliminary injunction.”). “[U]nrecoverable compliance costs may represent a harm—perhaps even a substantial one—but that does not mean that such harm is irreparable for purposes of the preliminary-injunction analysis.” *Netchoice v. Skrmetti*, No. 3:24-CV-01191, 2025 WL 1710228, at *14 (M.D. Tenn. June 18, 2025).

Even if “compliance costs can constitute irreparable harm under particular circumstances,” NetChoice “would need to show that such circumstances are present here.” *Id.* But NetChoice “has not done so; it has done little to show that the compliance costs in this case are (even if unrecoverable) not mere ‘ordinary compliance costs[, which] are typically insufficient to constitute irreparable harm.’” *Id.* (quoting *Freedom Holdings, Inc.*, 408 F.3d at 115). It does not allege that intends to “knowingly and willfully” violate Act 901. Ark. Code Ann. § 4-88-1503(a). And it has not shown that the safe harbor, allowing its members to avoid liability if they remedy

the risk of harm within thirty days of discovering it, *see* Ark. Code Ann. § 4-88-1502(b), does not offer its members sufficient protection from unforeseeable and irretrievable compliance costs. As explained above, Plaintiff need only alter “design[s], algorithm[s], or feature[s]” that it “knows or should have known through the exercise of reasonable care” would pose a substantial risk of accomplishing one of the harms enumerated in Act 901. Ark. Code Ann. § 4-88-1502(a). Plaintiff is therefore unlikely to suffer imminent irreparable harm.

VI. NETCHOICE HAS FAILED TO SHOW THE BALANCE OF THE EQUITIES AND PUBLIC INTEREST FAVOR AN INJUNCTION.

NetChoice likewise has failed to show that the balance of equities weighs in favor of granting a preliminary injunction. It not only discounts the public interest in having democratically enacted laws enforced, but it also overlooks the serious harms that Act 900 is aimed at reducing: addiction to and compulsive behaviors associated with social media.

When balancing the equities and public interest, courts consider the alleged “harm against the ‘serious[] and irreparabl[e] harm’ that an injunction would inflict on the State [and the public] by ‘barring the State from’” implementing a validly enacted law. *Eggers v. Evnen*, 48 F.4th 561, 567 (8th Cir. 2022) (quoting *Abbott v. Perez*, 585 U.S. 579, 602 (2018)); *see Nken v. Holder*, 556 U.S. 418, 435 (2009) (explaining that balance-of-the-equities and public-interest “factors merge when the Government is the opposing party”). “Any time a state is enjoined by a court from effectuating statutes enacted by representatives of its people” the State “suffers a form of irreparable injury.” *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2652 (2025) (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)).

Act 900 is a democratically enacted law, which was motivated to address undisputed evils: behavioral addiction to and compulsive behaviors associated with social media. *See* Ark. Code

Ann. § 4-88-1502(d)(1). A preliminary injunction would override the democratic process and prevent Defendants from enforcing Act 900, which will cause serious and irreparable harm. *See Eggers*, 48 F.4th at 567. Not only is this harm serious, but it is also certain. This necessarily outweighs NetChoice’s asserted irreparable harm, which is speculative at best. *See supra* 49–52. And even if Netchoice had shown the law is unconstitutional, that would not end the analysis. It would still need to show the “balance of harms and equities favors it at this time,” which it has not done. *See NetChoice, LLC v. Fitch*, No. 25A97, 2025 WL 2350189, at *1 (U.S. Aug. 14, 2025) (Kavanaugh, J.) (concurring in “the denial of NetChoice’s application for interim relief”).

NetChoice asserts that “[m]aintaining the status quo” will cause little harm. PI Br. 41. Nothing could be further from the truth. If Defendants are enjoined from enforcing Act 901, social media platforms will not be disincentivized from continuing to intentionally “hijack[] the social reward systems of a user’s brain” to cause addiction and have their engineers “invent new ways” to keep users’ addicted to their platforms.¹⁵ But if social media companies know their design features are intended to cause addiction in their minor users, they can no longer “ignore the problems they created and bury evidence” without risking liability under Act 900.¹⁶ Further, without higher privacy and security settings, minors are more likely to be exploited by sexual predators. Ex. B-18, *Over 300 million children a year are victims of technology-facilitated sexual exploitation and abuse* (Dec. 4, 2024). Without notification limits, minors will continue to lose sleep, leading to increased depression and anxiety.¹⁷ And without easily accessible, factual, noncontroversial

¹⁵ Ex. B-19, Von Tristan Harris, *The Slot Machine in Your Pocket*, (July 27, 2016).

¹⁶ Ex. B-20, Lily Jamali, *Meta covered up potential child harms, whistleblowers claim* (September 9, 2025).

¹⁷ Ex. B-13, H. Woods, *#Sleepyteens* 47 (2016) (“Consistent with previous research, higher levels of social media use were associated with poorer sleep quality, lower self-esteem and increased anxiety and depression.”); *id.* (“[N]ight-time specific social media use and emotion investment in social media were both associated with poorer sleep quality, lower self-esteem and higher anxiety and depression levels. Nighttime-specific social media use predicted poorer sleep quality, controlling for anxiety, depression and self-esteem.”); Ex. B-14, J. Levenson, *The association between social*

information about minors' use habits, parents will continue to be left in the dark regarding their children's social media usage habits.

Thus, NetChoice has failed to show even a single factor weighs in favor of a preliminary injunction, much less that the Court should exercise its discretion to grant this extraordinary relief here.

VII. ALTERNATIVELY, EVEN IF NETCHOICE HAD SHOWN EXTRAORDINARY INJUNCTIVE RELIEF IS WARRANTED, THE SCOPE OF RELIEF MUST BE NARROWLY TAILORED.

As explained above, NetChoice has fallen far short of establishing entitlement to a preliminary injunction. But even if that were not so, any preliminary injunction that this Court issues must be narrow and tailored to the harm that NetChoice has substantiated (which Defendants maintain is none).

Under the Judiciary Act of 1789, federal courts have limited equitable power; though the power is “flexible,” courts’ “equitable authority is not freewheeling.” *Trump*, 145 S. Ct. at 2551. For one, the injunctive relief courts grant “should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); *accord Trump*, 145 S. Ct. at 2551. Relatedly, “[a]n injunction must be tailored to remedy specific harm shown.” *Rogers v. Scurr*, 676 F.2d 1211, 1214 (8th Cir. 1982). That means a court lacks the authority “to fashion equitable relief” that extends beyond “the inadequacy that produced the injury in fact that the plaintiff has established.” *Labrador v. Poe*, 144 S. Ct. 921, 923 (2024) (Gorsuch, J., concurring in stay grant) (quoting *Gill v. Whitford*, 585 U.S. 48, 68 (2018)).

media use and sleep disturbance among young adults (“The rate of [social media] use has been growing rapidly in recent years. Additionally, disturbed and insufficient sleep has been associated with poor health outcomes. Thus, the strong association between [social media] use and sleep disturbance has important clinical implications for the health and well-being of young adults.”).

Accordingly, this Court cannot grant injunctive relief that extends beyond the parties. *See CASA*, 145 S. Ct. at 2557–58. And it cannot grant relief that extends beyond any specific harm that NetChoice has shown. *See Rogers*, 676 F.2d at 1214; *Gill*, 585 U.S. at 68. For example, if the Court concludes that the dashboard requirement is likely unconstitutional but not the prohibition on practices designed “to evoke any addiction” in minor users, Ark. Code Ann. § 4-88-1402(d)(1), then it should only enjoin Defendants from enforcing Act 900 as to the dashboard requirement. *See Sisney v. Kaemingk*, 15 F.4th 1181, 1194 (8th Cir. 2021) (“Generally, when confronting a constitutional problem in a law, courts should limit the solution by enjoining enforcement of any problematic portions while leaving the remainder intact.” (citation modified)).

Eschewing NetChoice’s request for a broad injunction is not only necessary to comply with the limits on the Court’s equitable powers, but it also gives due deference to the democratic process. After all, one reason that facial challenges are disfavored is that they “‘threaten to short circuit the democratic process’ by preventing duly enacted laws from being implemented in constitutional ways.” *NetChoice*, 603 U.S. at 723 (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008)). But that threat may be mitigated slightly if injunctive relief is tailored so that the challenged law can be enforced in likely constitutional ways while the proceeding is pending.

“At the preliminary injunction stage, especially where a facial challenge is not likely to succeed, courts cannot be said to be striking or voiding portions of a statute.” *Roth*, 2025 WL 2414160, at *18. “What courts are doing is temporarily preventing likely-unconstitutional applications of a statute against plaintiffs.” *Id.*; *see id.* (enjoining enforcement of one portion of a statute regulating commercial speech that the court held was likely unconstitutional but letting enforcement of

constitutional provisions stand); *see NetChoice, LLC v. Bonta*, No. 25-146, 2025 WL 2600007, at *16 (9th Cir. Sept. 9, 2025) (concluding that, “[f]or the most part, the district court got it right” when it enjoined enforcement of some statutory provisions it found were likely unconstitutional and not those that “passed constitutional muster”); *see also Walls v. Sanders*, 733 F. Supp. 3d 721, 752 (E.D. Ark. 2024) (prohibiting enforcement of a provision in a particular way), *vacated*, 144 F.4th 995, 1000 (8th Cir. 2025) (vacating injunction because plaintiffs failed to show likelihood of success).

Alternatively, Act 900 has an express severability clause, making each of the Act’s provisions severable. Act 900 of 2025, § 7 (“If any provision of this act or the application of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are declared severable). Here, should the Court find only one of the Act’s provisions out of all the challenged provisions unconstitutional, it should only enjoin enforcement of that one unconstitutional provision. Enjoining enforcement of the constitutional provisions would be improper.

Even if NetChoice had shown extraordinary injunctive relief is warranted, which it has not, this Court should narrowly tailor the scope of injunctive relief it grants.

CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court deny Plaintiff’s motion for a preliminary injunction, and they further request any and all just and proper relief to which they may be entitled.

Respectfully submitted,

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