No. 25-1456

In the United States Court of Appeals for the Tenth Circuit

NETCHOICE,

Plaintiff-Appellee,

v.

PHILIP J. WEISER, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF COLORADO,

Defendant-Appellant.

On Appeal from Order Granting Preliminary Injunction
U.S. District Court, District of Colorado, Hon. William J. Martinez
Case No. 25-cv-02538-WJM-KAS

BRIEF OF PLAINTIFF-APPELLEE NETCHOICE

Oral Argument Requested

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FEDERAL RULE OF APPELLATE PROCEDURE 26.1 DISCLOSURE STATEMENT

Plaintiff-Appellee NetChoice has no parent corporation, and no publicly held corporation owns 10% or more of its stock. These representations are made so that the Judges of this Court may evaluate possible disqualification or recusal.

/s/ Steven P. Lehotsky
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INTRODUCTION

The district court correctly held that Colorado House Bill 24-1136 ("Act") likely violates the First Amendment because it compels unprecedented warning labels for fully protected speech. The First Amendment does not permit the government to compel warning labels before movies, on book jackets, or before songs play on streaming services. Yet here, Colorado would obligate certain disfavored "social media" websites to opine on the contested impacts of social media use on youth mental and physical health, drawing only from a limited universe of State-approved sources, and repeating the State's preferred message at regular intervals. § 6-1-1601(1)-(2), (5).[1] In doing so, the Act flouts the one "fixed star in our constitutional constellation," *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943), which is that, "[i]n this Nation, no official . . . may command our tongues," *Chiles v. Salazar*, 146 S. Ct. 1010, 1021 (2026) (citation omitted). Colorado can deliver its own message about what it believes are the potential risks of social media use by minors. But it cannot conscript websites into parroting that message on the State's behalf. Accordingly, the Act triggers—and fails—strict scrutiny.

[1] This brief uses "website," "service," and "platform" interchangeably. Unless otherwise noted, statutory citations refer to the Colorado Revised Statutes.

The Act targets some of the most popular and important mediums of speech in American society. "[S]ocial media" websites disseminate a "staggering amount" of protected speech, across "billions of posts." *Moody v. NetChoice, LLC*, 603 U.S. 707, 716-19, 734, 737, 744 (2024). They allow people to "engage in" speech "on topics 'as diverse as human thought.'" *Packingham v. North Carolina*, 582 U.S. 98, 105 (2017) (citation omitted). The Supreme Court and district courts across the Nation have enjoined enforcement of laws interfering with access to, and the dissemination of content on, these websites.[2]

Defendant "concede[s]" that the Act "is a content-based regulation of speech." App.2:323. And content-based laws must satisfy "strict scrutiny," which "is fatal in fact absent truly extraordinary circumstances." *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 485 (2025) ("*FSC*"). That might be why Defendant has never attempted to show the Act satisfies strict scrutiny.

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[2] *See Moody*, 603 U.S. at 744; *Packingham*, 582 U.S. at 107; *NetChoice v. Hilgers*, 2026 WL 1850018 (D. Neb. June 27, 2026); *NetChoice v. Griffin*, 2026 WL 1068565, at *11 (W.D. Ark. Apr. 20, 2026); *NetChoice v. Jones*, 822 F. Supp. 3d 656 (E.D. Va. Feb. 27, 2026); *NetChoice v. Murrill*, 812 F. Supp. 3d 594 (M.D. La. 2025); *NetChoice v. Griffin*, 812 F. Supp. 3d 905 (W.D. Ark. 2025); *NetChoice v. Carr*, 789 F. Supp. 3d 1200 (N.D. Ga. 2025); *NetChoice, LLC v. Griffin*, 2025 WL 978607 (W.D. Ark. Mar. 31, 2025) ("*Griffin II*"); *Comput. & Commc'ns Indus. Ass'n v. Paxton*, 747 F. Supp. 3d 1011 (W.D. Tex. 2024); *NetChoice, LLC v. Reyes*, 748 F. Supp. 3d 1105 (D. Utah 2024).

Instead, Defendant's argument on appeal is that the Act's compelled-speech requirements impose run-of-the-mill commercial health and safety disclosures subject only to the standard from *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985). They do not. Whatever the government's authority to compel warnings about non-expressive products, Defendant fails to justify Colorado's unprecedented warning labels for fully protected speech.

The Act's compelled warnings are not commercial speech, so *Zauderer* does not apply. *United States v. Wenger*, 427 F.3d 840, 846 (10th Cir. 2005). And even if the Act regulated commercial speech, the Act's required warnings are neither "purely factual" nor "uncontroversial." *Zauderer*, 471 U.S. at 651. The Act requires covered websites to opine on social media's impact on minors, a subject that is heavily debated in academia, the courts, and society generally—down to the fundamental question of what is "social media." Defendant agrees that "[s]ome disclosures . . . might not be" "factual and uncontroversial" and "[s]ome formats . . . might not be" "minimally intrusive." AG.Br.28. Although Defendant understates the problem, these concessions underscore that the Act is not subject to *Zauderer*.

Compounding the Act's problems, its provisions are unconstitutionally vague. The Act's undefined operative compelled-speech provisions leave websites guessing as to how to comply with the Act. Likewise, the Act's vague "[s]ocial media platform" coverage definition leaves many websites

across the internet uncertain about whether they must speak the State's preferred message in the first place. § 6-1-1601(4).

This Court should affirm.

STATEMENT OF ISSUES

1. Whether the Act's compelled-speech requirements trigger strict First Amendment scrutiny because compelled-speech requirements necessarily force private speakers to convey the State's controversial messages to their users and because the Act's coverage definition, § 6-1-1601(4), is content-based.

2. Whether the Act's compelled-speech requirements fail heightened First Amendment scrutiny.

3. Whether the Act is facially unconstitutional because the Act imposes the same constitutional injury in every application to a covered website.

4. Whether the Act is unconstitutionally vague because its central "[s]ocial media platform" coverage definition, § 6-1-1601(4)(b), turns on the undefined phrase "predominant or exclusive function," and its operative compliance provisions, § 6-1-1601(1)-(2), fail to give covered platforms fair notice of what speech they must, and cannot, say.

STATEMENT OF THE CASE

A. Background

1. NetChoice members' websites disseminate and enable large amounts of protected speech.

The Act regulates websites operated by members of NetChoice's internet trade association, including: (1) Automattic (Tumblr); (2) Discord; (3) Meta (Facebook, Instagram, and Threads); (4) Nextdoor; (5) Pinterest; (6) Reddit; (7) Snap Inc. (Snapchat); (8) TikTok Inc. and TikTok USDS Joint Venture LLC (TikTok); (9) X; and (10) YouTube. App.1:151-52 ¶¶ 16-24.[3]

Each of these websites "engage[s] in expression" by "display[ing]" "distinctive expressive offering[s]" of "third party speech," according to their respective "community guidelines." *Moody*, 603 U.S. at 716-17, 738, 744 (citation modified). These websites also facilitate user speech. They all allow users "to share [content] with others" who can then "react to it, comment on it, or share it themselves." *Id.* at 719. The Supreme Court has recognized that these kinds of websites are among the primary avenues for public participation in American life—"perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard." *Packingham*, 582 U.S. at 107; *see* App.1:186-91 ¶¶ 15-27.

[3] Discord and TikTok Inc. and TikTok USDS Joint Venture LLC joined NetChoice after Defendant appealed.

2. Ample private resources exist to provide users with information about social media use and to provide parents with means of overseeing their minor children's internet use.

Covered websites recognize that their services should be used responsibly. This is especially true for younger users, which is why many members provide resources to minor users and their parents about responsible and safe use of social media. App.1:146-47 ¶¶ 9-12; App.1:158 ¶ 10; App.1:207-09 ¶¶ 55-57; App.1:180 ¶¶ 8-9. Websites continue to invest, innovate, and inform, such as by building parental controls, partnering with researchers on the effects of social media use, and publishing guides on digital well-being.

Governmental actors can also engage in their own speech about social media and provide resources themselves. In fact, Sections 2 and 3 of the Act—which NetChoice does *not* challenge—do precisely that, requiring the State to assemble a resource bank and create curricula about social media for schools. *See* Colo. Dep't of Educ., Media Literacy, https://perma.cc/9VS7-7W4E. Likewise, many third parties provide their own resources about online use. App.1:149 ¶ 14.

In addition, parental tools provided by both NetChoice members and third parties help parents oversee their minor children's use of social media online. App.1:149 ¶ 14; App.1:160-67 ¶¶ 17-27; App.1:179-80 ¶ 7; App.1:194-200 ¶¶ 32-40. NetChoice members also engage in content moderation to address potentially harmful content on their services. App.1:148 ¶ 13.c; App.1:167-71 ¶¶ 28-34; App.1:179 ¶ 6; App.1:201-07 ¶¶ 41-54.

B. Colorado House Bill 24-1136 Section 4

Colorado's Act targets a particular set of speakers based upon the content they disseminate, and it requires those members to opine on the highly controversial topic of "social media's" purported health effects on minors.

1. Covered actors and activities

The Act compels speech from a set of internet "actors" that convey a particular kind of content. *Moody*, 603 U.S. at 724. The Act regulates "social media platform[s]," which it defines as any website meeting four requirements:

> (I) Has more than one hundred thousand active users in Colorado;
> (II) Permits a person to become a registered user, establish an account, or create a public or semi-public profile for the purpose of allowing users to create, share, and view user-generated content through the account or profile;
> (III) Enables one or more users to create or post content that can be viewed by other users of the medium; and
> (IV) Includes a substantial function to allow users to interact socially with each other within the service or application.

§ 6-1-1601(4)(a).

The Act thus singles out and differentially regulates websites that "allow users to upload content . . . to share with others" and allow those "viewing the content . . . [to] react to it, comment on it, or share it themselves." *Moody*, 603 U.S. at 719.

The Act also excludes from its coverage 17 different kinds of websites based upon their content, specifically websites with the following "predominant or exclusive function[s]": "news, sports, [and] entertainment"; "elec-

tronic mail"; "commercial transactions" for "online shopping or e-commerce"; "teleconferencing and video conferencing"; "crowd-sourced content for reference guides"; "cloud-based electronic services"; "reference guides such as encyclopedias and dictionaries"; "interactive gaming"; "virtual gaming"; "businesses, products, or travel information"; "communication within a business"; "enterprise software"; "streaming service[s]"; "technical support"; "career development opportunities"; "academic or scholarly research"; and "news information for a mass medium." § 6-1-1601(4)(b).

2. The Act's compelled-speech warning notification requirements

The Act compels speech from covered websites, which the Act dictates must occur by communicating one of two state-compelled messages (or "functions") to minor users. § 6-1-1601(1)(a), (b).

Under the first alternative under § 6-1-1601(1)(a), covered websites must "establish a function" that "provide[s] users who are under the age of eighteen with information about their engagement in social media that helps the user understand the impact of social media on the developing brain and the mental and physical health of youth users." § 6-1-1601(2). This path compels covered websites to opine on the highly controversial topic of "the impact of social media" on "the developing brain and the mental and physical health" of minors, which is the subject of intense scholarly and social debate and active litigation.

Colorado limits the "information" that covered websites can use to form their state-compelled opinions: "The information must be supported by data

from peer-reviewed scholarly articles or the sources included in the mental health and technology resource bank established" and maintained by the Colorado Department of Education. *Id.* Nor does the Act allow covered websites to make decisions freely about the content and form of the compelled warnings. The Act requires Colorado officials to "establish standards" for notifications that "meet[] the [Act's] requirements." § 6-1-1601(5).

Alternatively, under § 6-1-1601(1)(b), covered websites must "[d]isplay[] a pop-up or full screen notification to a user who attests to being under the age of eighteen when the user: (I) Has spent one cumulative hour on the social media platform during a twenty-four-hour period; or (II) Is on a social media platform between the hours of ten p.m. and six a.m." § 6-1-1601(1)(b). This message "must repeat at least every thirty minutes." § 6-1-1601(3).

Defendant has confirmed that both options for displaying warnings compelled by the Act require covered websites to speak about "the impact of social media" under § 6-1-1601(2). AG.Br.10, 28-30; App.2:226-27, 293, 295-97, 301, 304, 324.

3. Enforcement

The Act is enforceable by the Colorado Attorney General, who may seek injunctions and civil penalties. §§ 6-1-103, 6-1-110, 6-1-112. The civil penalties for violations of the Act are substantial—up to $20,000 for "each violation." § 6-1-112(1)(a). Every "consumer or transaction involved" triggers a new "violation." *Id.*

C. Procedural history

NetChoice filed its complaint and a motion for preliminary injunction challenging the Act on August 14, 2025.

After a hearing, the district court granted NetChoice's motion. App.2:359. The court first concluded that "NetChoice's facial challenge is compatible with the analysis enunciated in *Moody*." App.2:361. Next, the court held that strict scrutiny likely applies because the Act's "compelled disclosure requirements are appropriately classified as expressive—and not commercial—speech." App.2:370. Finally, the court held that the Act's compelled-speech requirement likely failed strict scrutiny because it was "not the least restrictive means available for advancing [the State's] compelling interest." App.2:377.

SUMMARY OF THE ARGUMENT

The district court properly preliminarily enjoined Defendant's enforcement of the Act and its judgment should be affirmed.

I. NetChoice is likely to succeed on the merits because the Act's compelled-speech requirements facially violate the First Amendment.

A. The district court correctly concluded that the Act's compelled-speech requirements implicate the First Amendment's protections in every application and trigger strict scrutiny. The Act obligates every covered website to opine on and disseminate the State's message about the purported impacts of social media use on the mental and physical health of minor users.

The Act's compelled disclosures are not commercial speech. Defendant's theory that the Act compels commercial speech because users exchange data for services would render the entire internet commercial speech, stripping First Amendment protections from *The New York Times*, ESPN, Hulu, and any other ad-supported publisher.

The Act's coverage definition independently triggers strict scrutiny because it discriminates based upon websites' content, targeting social media while exempting (for example) websites that predominantly publish news, sports, entertainment, gaming, or academic content.

B. The district court correctly concluded that the Act's compelled-speech requirements fail strict scrutiny. Colorado could have pursued less restrictive alternatives such as requiring governmental entities like schools to distribute information about social media to users, as shown by the Act's own educational resource bank provisions. The Act is also not properly tailored. At core, Defendant has not justified subjecting all covered websites to the Act's compelled-speech requirements. This overinclusivity extends to the amount of fully protected speech the Act reaches, such as requiring a mental-health warning for a 17-year-old watching physics lectures on YouTube for over an hour.

C. The district court correctly concluded that the Act is likely facially invalid. The Act imposes the same constitutional injury on every covered website: it compels every covered website to opine on the contested health effects of social media use on young users. This constitutional defect is uniform

across all applications, and Defendant has identified no application for which the constitutional analysis would differ.

II. As an alternative basis for affirmance, the Act is unconstitutionally vague. The Act's coverage definition turns on whether a platform's "predominant or exclusive function" falls within one of 17 enumerated exclusions, but the Act does not define that critical phrase, providing no guidance for multi-function platforms. The operative compliance provisions are independently vague, failing to define what content the required warnings must display or what the Attorney General will deem sufficient.

III. NetChoice has satisfied the remaining preliminary injunction factors. Defendant expressly conceded that if NetChoice demonstrated a likelihood of success on the merits, the remaining factors are satisfied.

ARGUMENT

I. The district court correctly concluded that the Act's compelled-speech requirements likely violate the First Amendment.

"NetChoice is substantially likely to prevail on its First Amendment challenge to Section 4 of the Act." App.2:359.

A. Colorado's Act compels non-factual, controversial, and non-commercial speech in every application—triggering strict First Amendment scrutiny.

The Act compels speech, which renders the Act a content-based regulation of speech. *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795-96 (1988). Defendant "concede[s]" that the Act "is a content-based regu-

lation of speech." App.2:323. Content-based laws are "'presumptively unconstitutional and may be justified only if' they satisfy strict scrutiny." *FSC*, 606 U.S. at 471 (citation omitted).

1. The Act compels speech, which imposes the same First Amendment injury in every application.

By compelling covered websites to opine on highly controversial topics as warnings on their own services, Colorado's Act implicates the First Amendment's prohibition on compelled speech in every application. *Whenever* the government compels speech from *any* "actor[]," it triggers the First Amendment's protections. *Moody*, 603 U.S. at 724. Defendant "concede[s]" that the Act "regulates protected speech and therefore implicates the First Amendment." App.2:323. Thus, as the district court held, the Act is readily amenable to facial challenge. App.2:360-76.

"In this Nation, no official . . . may command our tongues or silence our voices." *Chiles*, 146 S. Ct. at 1021 (citation omitted). The First Amendment's freedoms of speech and of the press "include[] both the right to speak freely and the right to refrain from speaking at all." *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps.*, 585 U.S. 878, 892 (2018) (citation omitted). So the "government may not compel a person to speak its own preferred messages." *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023).

The First Amendment's prohibitions on compelled speech are robust and broad. It does not "matter whether the government seeks to compel a person to speak its message when he would prefer to remain silent or to force

an individual to include other ideas with his own speech that he would prefer not to include. All that offends the First Amendment just the same." *Id.* at 586-87 (citations omitted); *see Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n*, 475 U.S. 1, 12 (1986) ("*PG&E*") (controlling plurality op.).[4] And "this general rule, that the speaker has the right to tailor the speech, applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995). All manner of private entities have the right to be free from compelled speech—from hardware stores to book publishers to "social-media platforms." *Moody*, 603 U.S. at 719. Accordingly, any time a private entity is forced by the State to speak, those private entities each suffer the same constitutional injury.

That is the case here. The district court correctly concluded that the Act "requires *every* covered social media platform to perform the same task under the Act: provide" minors with state-mandated warnings about the alleged "impacts of social media use on their mental . . . health." App.2:361-62; *see* App.1:153-54 ¶¶ 26-29; App.1:172-76 ¶¶ 38-42; App.1:181 ¶10; App.1:210-11 ¶¶ 60-66. So, "to the extent [the Act] offends the First Amend-

[4] All subsequent citations to *PG&E* are to the controlling plurality opinion. *See Hurley*, 515 U.S. at 573, 575-76, 580 (recognizing *PG&E*'s plurality opinion as the case's holding).

ment, it does so in the same material way across all social media platforms subject to the provisions of the Act." App.2:362.

The same First Amendment compelled-speech analysis applies across all covered social media. And Defendant does not identify any entity covered by the law that is uniquely unprotected by the First Amendment right not to have the government dictate its speech. So the district court's holding is consistent with holdings from other courts. The Ninth Circuit, for instance, has held that laws compelling speech "raise the same First Amendment issues" "in every application to a covered social media company." *X Corp. v. Bonta*, 116 F.4th 888, 899 (9th Cir. 2024) (citation omitted) (addressing compelled-speech requirement); *NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1116 (9th Cir. 2024) ("*Bonta I*") (same).

Because this Act limits its coverage to "social media," this Court "need not speculate" about "hypothetical or imaginary" applications to other kinds of websites—assuming that would matter. *X Corp.*, 116 F.4th at 899 (citation modified).[5] The Act excludes services for which *Moody* (outside of the compelled-disclosure context) questioned whether a different First Amendment analysis might apply. 603 U.S. at 724-25; *see* App.1:152-53 ¶ 25. The Act excludes "email." *Moody*, 603 U.S. at 725; § 6-1-1601(4)(b)(I). The Act's exclu-

[5] *Moody* made clear that the facial First Amendment analysis focuses on whether there are "*kinds of* websites" that might "fall on different sides of the constitutional line," and not specific websites. 603 U.S. at 718, 726.

sion of "commercial transactions" for "[o]nline shopping or e-commerce," § 6-1-1601(4)(b)(II)(B), excludes "payment service[s]" and "online marketplace[s]," *Moody*, 603 U.S. at 725. The Act's exclusion of websites where the "content . . . is preselected by the provider and not user generated," § 6-1-1601(4)(b)(VI), excludes "ride-sharing service[s] like Uber," *Moody*, 603 U.S. at 725.

In short, the same First Amendment compelled-speech concerns are plainly implicated by all covered websites.

2. The Act's compelled-speech requirements trigger strict scrutiny.

Defendant concedes that the Act "is a content-based regulation of speech." App.2:323. The Act's warning requirements compel covered websites to engage in controversial speech. Worse, covered websites must present these warnings on their own services and direct the warnings to their own users. *Ass'n of Home Appliance Mfrs. v. Weiser*, 826 F. Supp. 3d 1302, 1311 n.3 (D. Colo. 2025) ("*AHAM*") ("[T]he average consumer is likely to think that AHAM's members endorse the speech contained on the webpage because it is on their product.").

The Act's compelled-speech requirements trigger strict First Amendment scrutiny. "Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech" and thus triggers strict scrutiny. *Riley*, 487 U.S. at 795; *see 303 Creative LLC v. Elenis*, 6 F.4th 1160, 1178 (10th Cir. 2021), *rev'd on other grounds*, 600 U.S. 570 (2023); *see also Nat'l Inst. of Fam.*

& Life Advocs. v. Becerra, 585 U.S. 755, 766 (2018) ("*NIFLA*") (similar); *X Corp.*, 116 F.4th at 899-900 (similar). Strict scrutiny is necessary to safeguard the "principle that the government may not interfere with 'an uninhibited marketplace of ideas.'" *303 Creative*, 600 U.S. at 585 (citation omitted); *see* App.1:210 ¶ 63. The Constitution's prohibition against compelled speech protects *all* private entities. But it has special force here, where the Act compels speech that would alter the "compilations" of third-party speech and the "expressive product[s] that most reflect[] [covered websites'] views and priorities." *Moody*, 603 U.S. at 716, 718; *see* App.1:211 ¶ 65.[6]

Here, the Act undisputedly compels speech by requiring covered platforms to opine on "the impact of social media on the developing brain and the mental and physical health of youth users" in the form of warnings displayed to their users on their services. § 6-1-1601(2); *see* App.1:173 ¶ 40. As the district court put it, "the disclosures compelled by the Act require social media companies to opine on the impacts of social media use on [users'] mental and physical health"—which "pertain to expressive issues of significant social, political, and scientific concern." App.2:369. That alone would make the Act a content-based regulation of speech based on binding precedent.

[6] It is unnecessary for this Court to conclude that covered services engage in protected editorial discretion under *Moody* to affirm. As explained in Part I.A.1, the First Amendment prohibits compelling speech from all manner of private entities.

The Act has other features that compound the First Amendment problem. The State artificially limits the information that websites may use to formulate their state-mandated speech: "data from peer-reviewed scholarly articles or the sources included in" the State's "mental health and technology resource bank." § 6-1-1601(2). The requirement to provide this compelled speech even *once* based upon the State's self-selected universe of materials already offends the First Amendment. But the First Amendment injury is aggravated by the State's "standards" that will, among other things: (1) "Recommend intervals for notification frequency"; and (2) "Provide sample messaging for the content of the notification." § 6-1-1601(5)(a)-(b).

If that were not enough, context shows that the State intends for covered platforms to criticize "social media." As demonstrated by the Act's legislative findings, Colorado wants to commandeer these websites to convey the State's own message to users that covered websites are harmful and should be avoided or rarely used. HB24-1136 § 1; *e.g.*, *id.* § 1(f) ("Social media sites are designed to maximize user engagement, which can encourage excessive social media use and behavioral dysregulation."). "[R]equiring a company to publicly condemn itself is undoubtedly a more 'effective' way for the government to stigmatize and shape behavior than for the government to have to convey its views itself, but that makes [this Act] more constitutionally offensive, not less so." *Nat'l Ass'n of Mfrs. v. SEC*, 800 F.3d 518, 530 (D.C. Cir. 2015) (citation omitted).

Any purported "flexibility Section 4 affords social media companies to select the exact verbiage in the mandatory disclosures is of no constitutional moment" because "[t]he constitutional quandary in this case is that Section 4 requires social media companies . . . to speak at all." App.2:362-63; *contra* AG.Br.1, 9, 37. It is plainly unconstitutional for the government to require a private person to speak on a certain topic even if he may say whatever he wants about the topic. *E.g.*, *Bonta I*, 113 F.4th at 1116 (invalidating law compelling reports for which regulated companies had broad discretion to determine the wording and contents); *X Corp.*, 116 F.4th at 895 (similar, for "whether and how they define and address certain enumerated content categories"). Imagine a law compelling people to say what effects the government's tariff policy has had on their lives. That law would unconstitutionally compel private speech, irrespective of people's ability to say whatever they choose about the topic. Here, of course, covered platforms *cannot* say whatever they choose. The State has restricted the universe of materials from which a covered website can determine its state-mandated message. § 6-1-1601(2).

Likewise, it also does not matter that covered websites' disclosures purportedly "can include [their] own opinions on social media and youth mental health." AG.Br.37. Defendant conspicuously does not say definitively whether and to what extent websites could disagree with the mandated disclosures. App.2:325-26. Regardless, covered websites being able to include their own statements does not mitigate the First Amendment violation. Cov-

ered websites would still be forced to "affirm in one breath that which they deny in the next," undermining the protections afforded by the First Amendment. *PG&E*, 475 U.S. at 16; *id.* at 15 n.11 ("[t]he presence of a disclaimer" in compelled-speech requirement did not alleviate First Amendment injury). If the mere possibility that a speaker could attempt to "dissociate" itself from the forced speech by "simply post[ing] a disclaimer" sufficed, that "would justify any law compelling speech." *Masterpiece Cakeshop v. Colo. C.R. Comm'n*, 584 U.S. 617, 663 (2018) (Thomas, J., concurring); *see Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 256 (1974) (similar).

3. The Act does not regulate or compel commercial speech.

Defendant "concede[s]" that the Act's compelled disclosures are content-based regulations of speech. App.2:323. But Defendant contends that the Act is a "regulation of commercial speech" subject to a lower level of scrutiny. AG.Br.14. But the Act does not regulate or compel mere commercial speech. Rather, it forces private companies to opine on controversial, contested questions—which may not bear on their services at all. Therefore, the district court correctly rejected this argument. App.2:369.

a. The Act does not compel or regulate commercial speech under this Circuit's multi-factor test, which Defendant does not attempt to satisfy.

The Act does not regulate commercial speech. *Contra* Scholar.Br.7-9. "Commercial speech is that which 'does no more than propose a commercial transaction.'" *Wenger*, 427 F.3d at 846 (citation omitted). "Advertising," for

example, is "widely recognized as the most obvious example of commercial speech." *Id.*

This Court applies a "common sense" approach to distinguishing commercial from non-commercial speech. *Id.* at 847. That approach includes reviewing "a 'combination' of ['*Bolger*'] factors": whether the speech at issue (1) is "an advertisement"; (2) "refers to a specific product"; or (3) "is motivated by an economic interest in selling the product." *Id.* (citing *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66-67 (1983)). State regulation of commercial speech is "[t]ypically" subject to intermediate scrutiny. *Id.* at 846. But "[i]n cases where commercial speech is 'inextricably intertwined with otherwise fully protected speech,' more substantial constitutional scrutiny will apply." *Id.* at 847 (quoting *Riley*, 487 U.S. at 796).

This Court can reject Defendant's commercial-speech arguments at the threshold. Where a company is not already engaging in some form of commercial speech that the government then decides to regulate, the *Bolger* factors necessarily fail. *Cf. Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229 (2010) (addressing constitutionality of law requiring factual disclosure to accompany certain advertisements). Here, the Act does not require disclosures appended to commercial speech, such as disclaimers on commercial advertisements that websites voluntarily publish. The government cannot compel private entities to speak in the first instance and then label that speech "commercial." The *Bolger* factors assume a preexisting commercial message that the government subsequently regulates. Here, there is no

preexisting message. Instead, the Act *creates* the speech, then labels it "commercial."

Regardless, the *Bolger* factors confirm that the Act neither regulates nor compels commercial speech. As in the district court, Defendant does not attempt to argue that the Act regulates commercial speech under these factors. AG.Br.17.

First, neither social media websites themselves nor the compelled warnings are "advertisement[s]," and they do not "propose a commercial transaction." *Porous Media Corp. v. Pall Corp.*, 173 F.3d 1109, 1120 (8th Cir. 1999) (citations omitted). As the district court reasoned, the Act's "compelled disclosures . . . do far more than merely propose a commercial transaction" and "are not designed to sell a product or service." App.2:369-70. In fact, they are designed to *deter* use of websites' services. AG.Br.17.

Second, the warning requirements do not "refer[] to a specific product." *Wenger*, 427 F.3d at 847; *see Bonta I*, 113 F.4th at 1120 (compelled-speech requirements went "beyond opining about [websites'] products or services"). The Act does not tie its compelled warnings to the specifics of any one service. Instead, the Act requires warnings about "the impact of social media" *generally*, which is defined by the Act to include myriad services that "allow users to interact socially with each other." § 6-1-1601(2), (4)(a)(IV).

The Act's genericized scope of coverage is one of its key constitutional defects. There is simply not sufficient evidence of the impacts of even a small fraction of the services the Act covers. And the evidence that does exist for

that handful of services is equivocal at best. *E.g.*, Nat'l Acads. of Scis., Eng'g & Med., Social Media and Adolescent Health 94 (2024), https://perma.cc/YNR7-AQGU ("The committee's review of the literature . . . did not support the conclusion that social media causes changes in adolescent health at the population level.").

"Social media" is not a commodity like nicotine or benzene. It is *speech*. And it refers to a broad collection of digital services, defined differently study-to-study, State-to-State, and family-to-family. In academic, legal, and cultural debates, there is no consensus definition of "social media." *E.g.*, Claire Cain Miller, *Everyone Says Social Media Is Bad for Teens. Proving It Is Another Thing*, N.Y. Times (June 17, 2023), https://perma.cc/385F-LVYZ ("There isn't even a shared definition of what social media is."). As a result, existing scholarship about the impacts of social media analyzes different platforms—and only a fraction of the "social media" websites regulated by the Act. It necessarily does not contain information about *every* social media website regulated by the Act. *E.g.*, App.1:174 ¶ 40.e. Nor can Defendant argue that research into particular "features" is generalizable beyond the websites analyzed in those studies. The only features the Act singles out for regulation are ones facilitating users' social interaction.

As a result, most covered websites will need to opine about the equivocal effects of *other* services. For example, NetChoice-member Nextdoor (for which there is no research) would need to explain what the scholarship says about other websites entirely—even if those other websites could not be

more different. Even if the government could require social media companies to opine about their own services (it cannot), the government cannot require those companies to opine about *other* companies' services. *NIFLA*, 585 U.S. at 769.

Finally, the compelled warnings are not designed to target speech "motivated by an economic interest in selling the product." *Wenger*, 427 F.3d at 847. It is true that many covered websites operate for profit. So does *The New York Times*. So does Random House. The fact that websites have an economic motivation for disseminating speech is "insufficient by itself" to transform their entire expressive offerings into "commercial speech." *Bolger*, 463 U.S. at 67; *Bonta I*, 113 F.4th at 1120 ("[T]hat a business may earn revenue from its services" does not "render its opinions about those services 'commercial.'"). The "First Amendment extends to all persons engaged in expressive conduct, including those who seek profit." *See 303 Creative*, 600 U.S. at 600; *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501 (1952) (that speech is "published and sold for profit does not prevent [it] from being a form of expression whose liberty is safeguarded by the First Amendment"). Otherwise, any number of publications, including books, newspapers, television channels, and streaming services' offerings, could be deemed "commercial speech." App.2:373-74.

b. Defendant's argument that "social media platforms" regulated by the Act have a "commercial relationship" with their users lacks basis in the record and the Act—and does not render the compelled warnings commercial speech.

Rather than attempt to satisfy the *Bolger* factors, Defendant instead erroneously argues that "[s]ocial media companies operate within a commercial relationship with users, providing services in exchange for users' attention and data, which platforms monetize primarily through targeted advertising." AG.Br.19. Even if factually true (and it is not, in many cases), this would not justify treating the Act as regulating commercial speech. Again, most online businesses (including the websites operated by *The New York Times* and *The Wall Street Journal*) seek to engage users and earn a profit by advertising. And accepting Defendant's argument "would mean that basically any compelled disclosure by any business about its activities would be commercial and subject to a lower tier of scrutiny." *X Corp.*, 116 F.4th at 902. That is wrong. *Id.*

Defendant's broad assertions about the relationship between covered "social media" services and their users lack any basis in both the factual record and the Act's scope of coverage. Contrary to Defendant's suggestion, the Act does not require "targeted advertising," AG.Br.19, as a necessary element to be regulated as a "social media platform." § 6-1-1601(4)(a). Perhaps that is why the record lacks factual substantiation for this proposition.

Furthermore, Defendant's flawed theory treats covered services themselves—and the broad array of fully protected speech available on them—as

commercial speech. This is obviously wrong. The Supreme Court has already recognized that "social media" websites disseminate "a staggering amount of" fully protected speech across "billion[s]" of posts from nearly as many users. *Moody*, 603 U.S. at 719. That is why the Supreme Court has already held that "access[ing]" and disseminating speech on "social media" are parts of "the legitimate exercise of First Amendment rights." *Packingham*, 582 U.S. at 108. Tellingly, none of the Supreme Court's cases involving "social media" applied a commercial-speech analysis.

It is irrelevant whether a small proportion of this content might be third-party advertisements for products and services offered by those third parties. That is true of many websites on the internet. Just because a speech disseminator publishes some third-party advertisements does not transform that entire service into merely commercial speech. For example, the Supreme Court has observed "that much of the material in ordinary newspapers is commercial speech." *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 423 (1993). After all, the newspaper industry long relied on advertising revenue, such that detailed reporting on political scandals was placed side-by-side with full-page advertisements for department store sales. Nevertheless, newspapers do far "more than propose a commercial transaction." *United States v. United Foods, Inc.*, 533 U.S. 405, 409 (2001). In such cases, the commercial-speech advertisements are "inextricably intertwined with otherwise fully protected speech." *Riley*, 487 U.S. at 796. And the government

cannot "separate the component parts of" commercial speech "from the fully protected whole." *Id.*

The same is true for Defendant's assertions about covered services' data collection. Simply put, internet use requires some amount of data collection and processing. Otherwise, online services could not operate and provide the vast amount of expression and information they do. Digital services often collect users' Internet Protocol addresses, as well as technical data about the user's device, operating system, and screen resolution. Services may also use data about a user's preferred language, age, and preferences to inform what content the user sees.

At bottom, Defendant's theory would transform the entire internet into commercial speech subject to reduced First Amendment protection—contrary to Supreme Court precedent. Countless websites collect user data for purposes of advertising—or just to operate. *See, e.g.*, *United States v. Google LLC*, 778 F. Supp. 3d 797, 812-13 (E.D. Va. 2025) ("Some of the world's most popular websites, such as Bing, Facebook, Google, Instagram, MSN, Pinterest, Reddit, Spotify, TikTok, Twitch, Weather.com, WhatsApp, and X, allow users to access much or all of their content and services at no financial cost" because they "generate [revenue]" "from selling ad space to advertisers[.]"). Under Defendant's theory, these websites and countless others are commer-

cial speech, and thus the government can restrict or compel speech on their services subject to intermediate scrutiny.[7] That is not the law.

c. Nor does the Act compel speech akin to traditional product warning labels.

Unable to demonstrate that the Act regulates commercial speech under the *Bolger* factors or any other standard, Defendant argues that "disclosures concerning the risks, attributes, or safe use of a company's own products and services are commercial speech," by analogizing to cigarette warning labels, gun safety warnings, and calorie disclosures on food packaging. AG.Br.19. Those examples all involve tangible products. Yet the Act here demands warning labels for *fully protected speech*. There is no basis in law or fact for such an unprecedented approach. Just as the First Amendment does not permit government-mandated warning labels for movies, music, or video games, it cannot require warnings for social media. So Defendant's repeated analogies to other product warning labels are just *ipse dixit*. When government can require such compelled speech, it is because the facts and law support the precise disclosures at issue. That just points back to Defendant's burden to justify the Act. He has not.

None of the examples Defendant proffers involve entities disseminating protected speech; they involve safety information about physical, non-ex-

[7] For the same reasons, this Court should not adopt the flawed analysis from *Students Engaged in Advancing Texas v. Paxton*, 177 F.4th 665, 669-70 (5th Cir. June 4, 2026).

pressive products. AG.Br.18-19 (analogizing to cases involving cigarettes, cell phones, mercury-containing products, food, and firearms). Here, however, the Act imposes a warning label on websites whose entire purpose is disseminating undeniably protected speech. As the district court acknowledged, covered websites engage in First Amendment protected "expressive choices" by "compiling and curating others' speech into an expressive product of [their] own" and by using their content moderation policies "to decide which third-party content those feeds will display, or how the display will be ordered and organized." App.2:373 (quoting *Moody*, 603 U.S. at 709-10, 740). That dissemination of speech is entitled to full First Amendment protection, just like the compilations of speech in newspapers or magazines. *Moody*, 603 U.S. at 731-32. And just because newspapers, magazines, and books can be sold does not mean they can be treated as any other commercial product, such as cigarettes or food items, subject to a lower level of First Amendment protection. *Cf.* App.2:373 (explaining why commercial speech is defined narrowly because "[u]nder a broad interpretation, a newspaper article could be considered 'commercial speech' because the newspaper company sells newspapers" (quoting *Ketonatural Pet Foods, Inc. v. Hill's Pet Nutrition, Inc.*, 756 F. Supp. 3d 1128, 1146 (D. Kan. 2024))).

Previous attempts to regulate other forms of fully protected speech are illustrative. When Illinois attempted to require warning labels for purportedly inappropriate sexual content in video games, the Seventh Circuit concluded that such warnings did not compel commercial speech and violated

strict scrutiny. *See Ent. Software Ass'n v. Blagojevich*, 469 F.3d 641 (7th Cir. 2006). Much like the purported "impacts" of social media use here, the State's view of the topic "is far more opinion-based than the question of whether a particular chemical is within any given product" and the private entity "may have an entirely different" view of the issue. *Id.* at 652; *see also Video Software Dealers Ass'n v. Schwarzenegger*, 556 F.3d 950, 966 (9th Cir. 2009) (similar), *aff'd on other grounds sub nom. Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786 (2011).

Moreover, the Act's required warnings do not involve "a company's *own* products and services." AG.Br.19. As explained above at pp.23-24, the Act requires services to opine on the "impacts of social media use generally," App.2:374. The Act's compelled-speech warning requirements are not "limited to . . . 'information about the terms under which [covered websites'] services will be available.'" *NIFLA*, 585 U.S. at 768 (citation modified) (quoting *Zauderer*, 471 U.S. at 651). Rather, in practice, they require the vast majority of covered websites "to disclose [opinions] about" what the State thinks is true of *other websites*. *Id.* at 769. That is a far cry from compelled disclosure of the number of calories contained in a specific food item or a specific warning label on cigarette packages. AG.Br.18, 23.[8]

[8] This distinction is also why affirmance would not "call into question decades' worth of authority governing health and safety warnings." AG.Br.21; *see* App.2:370, 374.

Imagine the government compelled video games to warn about the "impacts" of video games on minor users, irrespective of what kind of content the video game features. Requiring *Mario Kart* or *Sonic the Hedgehog* to opine about the potential risks of video games based upon scholarship analyzing *Grand Theft Auto* and *Call of Duty* is not an acceptable consumer warning requirement—even though they are all "video games." The same is true here.

4. Because the Act does not regulate commercial speech nor compel factual and uncontroversial speech, *Zauderer* does not apply.

The district court correctly concluded that the *Zauderer* standard does not apply to the Act's compelled-speech requirement. App.2:376 (collecting cases). Defendant has conceded that "[s]ome disclosures . . . might not be" "factual and uncontroversial" and "[s]ome formats . . . might not be" "minimally intrusive." AG.Br.28. Especially given those concessions, *Zauderer* does not apply.

a. The Supreme Court has emphasized that laws compelling disclosures to a business's users are generally treated no differently from any other law compelling speech. *E.g.*, *NIFLA*, 585 U.S. at 771. *Zauderer* provides a narrow exception to that rule for non-burdensome, "purely factual and uncontroversial" disclosures about a company's own services to cure "inherently misleading" commercial "advertisements." 471 U.S. at 641, 651; *see Chiles*, 146 S. Ct. at 1022 ("disclose only factual, noncontroversial information *in commer-*

cial speech" (emphasis added; citation modified)); *Wenger*, 427 F.3d at 849 ("*Zauderer* presumes that the government's interest in *preventing consumer deception* is substantial." (emphasis added)). But the *Zauderer* exception does not apply here for numerous reasons. *Contra* Scholar.Br.9-14.

As explained above, the Act does not regulate commercial advertising. Likewise, the Act is not "limited to . . . 'information about the terms under which [covered websites'] services will be available.'" *NIFLA*, 585 U.S. at 768 (cleaned up) (quoting *Zauderer*, 471 U.S. at 651); *see supra* pp.23-24. So *Zauderer* cannot apply here.

Regardless, the Act's compelled warnings are neither purely "factual" nor "uncontroversial," which also means *Zauderer* cannot apply. *Wenger*, 427 F.3d at 849; *contra* Scholar.Br.14-19. Factual information is information that is both "factually accurate" and not "misleading." *Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1276 (9th Cir. 2023) (citation omitted). The government cannot compel private entities to opine on issues "subject to good-faith scientific or evidentiary dispute" that are "part of a live, contentious political or moral debate." *Free Speech Coal., Inc. v. Paxton*, 95 F.4th 263, 281-82 (5th Cir. 2024), *aff'd on other grounds*, 606 U.S. 461; *e.g.*, *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 478 (9th Cir. 2022) ("robust disagreement by reputable scientific sources").

Social media use and its purported effects on mental health are subject to the kind of scholarly, social, and cultural debate that makes any compelled warning on the topic both non-factual and "controversial" for purposes of

Zauderer. Again, existing scholarship is equivocal and focuses on only a handful of online services. *See supra* pp.23-24. Perhaps for those reasons and others, the former U.S. Surgeon General acknowledged that "robust" analysis of social media has "not yet been conducted" and that "[m]ore research is needed to fully understand the impact of social media." U.S. Surgeon Gen., Social Media and Youth Mental Health 4, The U.S. Surgeon General's Advisory (2023), https://perma.cc/D2TM-KHRH, *cited by* HB24-1136 § 1(a); AG.Br.32. In particular, the Surgeon General stated that it is not clear whether social media use causes purported harms, purported harms lead to social media use, or something else is driving both. Advisory at 4, 11. "The relationship between social media and youth mental health is complex and potentially bidirectional." *Id.* at 11. The advisory also notes research showing that "[s]ocial media can provide benefits for some youth by providing positive community and connection with others who share identities, abilities, and interests." *Id.* at 6. These benefits may be "especially important for youth who are often marginalized, including racial, ethnic, and sexual and gender minorities." *Id.* Thus, the very source that the Legislature used to support the Act's compelled-speech requirement acknowledges that debate about social media use entails "robust disagreement by reputable scientific sources." *Cal. Chamber of Com.*, 29 F.4th at 478.

Consistent with the Surgeon General's advisory, the National Academies of Sciences, Engineering, and Medicine concluded that its "review of the literature . . . did not support the conclusion that social media causes

changes in adolescent health at the population level." Social Media and Adolescent Health at 94. Numerous peer-reviewed studies conclude similarly. For example, one recent "meta-analysis of 46 studies of youth social media use and mental health" concluded that "the current pool of research is unable to support claims of harmful effects for social media use on youth internalizing disorders" and recommended "caution . . . when attributing mental health harm to social media use as the current evidence cannot support this." Christopher J. Ferguson et al., *There is no evidence that time spent on social media is correlated with adolescent mental health problems: Findings from a meta-analysis*, 56 Professional Psychology: Research and Practice 73 (abstract) (Feb. 2025), https://perma.cc/NSR6-5MHG; *see id.* at 73-83.

The Act would require each individual platform to wade into these debates, determine what (if anything) is relevant to its particular service, and then publicly state its conclusions. Yet the First Amendment does not permit requirements for regulated entities to "'undertake contextual analyses, weighing and balancing many factors' to determine the speech it must parrot." *RJ Reynolds Tobacco Co. v. FDA*, 96 F.4th 863, 878 (5th Cir. 2024) (quoting *Book People, Inc. v. Wong*, 91 F.4th 318, 340 (5th Cir. 2024)); *contra* Scholar.Br.14-15 (relying on *RJ Reynolds*). And to the extent the State disagrees with the conclusions that platforms draw, that disagreement will be mediated by courts. But courts—much like the parties to this case—are not "scientific journal editors, much less social scientists, behavioral experts, or neurologists. The courts generally are not the place to hash out scientific de-

bate, particularly not on so contentious a topic as the impacts of engaging with" social media. *Free Speech Coal.*, 95 F.4th at 282. "Experts must do that in academic journals, studies, and presentations." *Id.*

Beyond the academic literature, the impacts of social media and how to address those issues are currently being litigated in courts and debated in state legislatures across the country. As Defendant's brief acknowledges, courts are considering claims brought by users against certain social media companies. AG.Br.32. And other courts have enjoined enforcement of laws attempting to restrict access to social media, often concluding that the evidence of social media's harms is underdeveloped. *See supra* p.2 n.2.

In addition, the Act's required notifications compel websites to engage in speech designed to deter users. That message of deterrence is itself "controversial," because it is "fundamentally at odds with" covered websites' missions to be open and available for all users to access the wide range of protected speech. *Nat'l Ass'n of Wheat Growers*, 85 F.4th at 1277-78 (citation omitted); *e.g.*, App.1:158-59 ¶¶ 10-11.

Decisions from other Circuits illustrate why the Act's compelled warnings are not factual, uncontroversial, or commercial. In *Bonta I*, the Ninth Circuit held unconstitutional a California law requiring certain websites "to opine on potential harm to children" from use of their services. 113 F.4th at 1117. The Court applied strict scrutiny because the law's "requirement . . . regulate[d] far more than mere commercial speech" and was "disconnected from any economic transaction." *Id.* at 1119. And it held that a "business's

opinion about how its services might expose children to harmful content online is not 'purely factual and uncontroversial'" for purposes of *Zauderer*. *Id.*

Similarly in *X Corp.*, the Ninth Circuit held unconstitutional a California law requiring websites to "detail" their "policies and actions concerning certain state-specified categories of content." 116 F.4th at 899. The Court concluded that "report[ing] whether and how [platforms] believe particular, controversial categories of content should be defined and regulated on their platforms" did not qualify for *Zauderer* review. *Id.* at 902. The Court also held that the requirements went "further" than typical "product warnings." *Id.* at 901.

In *Free Speech Coalition*, the Fifth Circuit invalidated a law compelling pornography websites to display "health warnings"—attributed to the State, unlike the Act here—to their users regarding pornography. 95 F.4th at 279. Even assuming that the disclosures were factual, the Fifth Circuit concluded they were not uncontroversial, so *Zauderer* could not apply. *Id.* at 281-82.

b. Defendant's contrary arguments are unpersuasive.

Defendant first suggests that the Act's compelled warnings should be deemed factual and uncontroversial simply because they will be "'supported by data from peer-reviewed scholarly articles' or a 'mental health and technology resource bank.'" AG.Br.30 (quoting § 6-1-1601(2)). But one of the core problems here is that there is "robust disagreement by reputable scientific sources" and "scientific debate." *Cal. Chamber of Com.*, 29 F.4th at 478.

The existence of a one-sided resource bank to back Colorado's side of the roiling debate about social media use just proves the point that these disclosures are neither purely factual nor uncontroversial.

Zauderer's inquiry asks whether the underlying proposition is factually settled and uncontroversial, not whether the disclosure accurately cites a source that supports one side of the ongoing debate. Here, the Act's compelled warning is "controversial for some reason other than dispute about simple factual accuracy" about what any one academic source says. *Am. Meat Inst. v. U.S. Dep't of Agric.*, 760 F.3d 18, 27 (D.C. Cir. 2014). A disclosure quoting a paper claiming the earth is flat or that chocolate consumption increases (or decreases) life expectancy is not factually accurate just because it accurately recounts the paper's conclusions. And even if "the words the state puts into the [speaker]'s mouth are factual, that does not divorce the speech from its moral or ideological implications." *Stuart v. Camnitz*, 774 F.3d 238, 246 (4th Cir. 2014). So the Act's warnings reflect the State's *opinion* or *view* that social media has negative impacts on minor users—a view that is subject to vigorous debate and scientific uncertainty.

Defendant's reliance on *CTIA - The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 846 (9th Cir. 2019), for the proposition that "any function referencing scholarly research will be literally true," AG.Br.31, is misplaced. The compelled disclosure there was "literally true" because it required a specific notice citing a specific federal guideline for radio-frequency exposure. *CTIA*, 928 F.3d at 846. The Act's warning here is distinguishable. It does not compel

a specific disclosure referencing a specific fact about an electromagnetic phenomenon. Rather, the Act requires websites to opine on a subject (social media use) that is the topic of a substantial public-policy debate, down to what websites should be included in the debate.

As for the controversial nature of the Act's warnings, Defendant next suggests that the existence of the Surgeon General's advisory and two court cases mean that social media and mental health are "not subject to good-faith scientific or evidentiary dispute." AG.Br.31 (citation omitted). Those authorities prove precisely the opposite. Defendant mischaracterizes the Surgeon General's advisory, ignoring its nuanced conclusions, the gaps in the scientific literature, and the many benefits of social media to youth. *See supra* p.33. And the lawsuits cited by Defendant cut the other way, showing that the issue of *particular* online services' effects on minors is a topic being actively litigated and limited to a small handful of services.[9] Moreover, this ongoing litigation raises both the controversy and harm to covered companies under Colorado's Act—as being forced to make statements about the purported impacts of social media could provoke additional claims. This is the very essence of a controversial statement.

[9] The court presiding over much of this litigation recently ruled that many issues, including the question of whether Meta's platforms are "designed to be addictive" to minors, are the subject of "a genuine dispute of material fact." *In re Soc. Media Adolescent Addiction/Personal Injury Products Liab. Litig.*, 2026 WL 1892681, at *4 (N.D. Cal. June 29, 2026).

Defendant also claims the Act's warnings are not controversial because websites "are not required to adopt a moral or political view as their own." AG.Br.33. But that is exactly what the warnings require websites to do: wade into a controversial debate and, in the course of so doing, potentially be forced to impugn their own reputations and dissuade users from using their services. And users will of course attribute the warning's language about the alleged harms of social media to the social media website that is forced to display it. *E.g.*, *AHAM*, 826 F. Supp. 3d at 1311 n.3.

5. The Act's content-based coverage definition independently triggers strict scrutiny.

The Act's compelled warnings are subject to strict scrutiny for another, independent reason—the Act's central "social media platform" coverage definition is content-based. § 6-1-1601(4).[10] Where a state law's "coverage provision" "requires consideration of [websites'] content," that law is content based. *Murrill*, 812 F. Supp. 3d at 644 (citation modified). Here, the Act both defines the scope of covered websites and excludes numerous other websites from its burdens based on their "subject matter" and thus "content." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (citation omitted).

The Act targets websites that "allow users to interact socially with each other," § 6-1-1601(4)(a)(IV), but not websites where users receive one-way

[10] The district court did not reach this issue because it concluded that the Act "likely compels non-commercial speech." App.2:366 n.4.

institutional speech (*e.g.*, streaming), nor where they interact for other reasons. *See Reyes*, 748 F. Supp. 3d at 1121. The Act also exempts a litany of the State's favored entities based on the content they feature across 17 separate categories, including "[n]ews, sports, entertainment," "interactive gaming," "professional networking," and "academic or scholarly research" websites. § 6-1-1601(4)(b). These websites need not shoulder the Act's burdens. "The elevation of news, sports, commerce, and provider-generated content over user-generated content is a content-based regulation." *Paxton*, 747 F. Supp. 3d at 1032; *see Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 591 U.S. 610, 619 (2020) (controlling plurality op.) (content-based exceptions trigger strict scrutiny); *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 564 (2011).

Thus, even if the Act's compelled warnings involved only purely factual, uncontroversial commercial speech (they do not), the fact that the Act imposes this speech burden in a content-discriminatory manner should subject it to strict scrutiny.

B. The Act fails any form of heightened First Amendment scrutiny.

Under strict scrutiny, Defendant must demonstrate that Colorado has "[1] adopt[ed] the least restrictive means of [2] achieving a compelling state interest." *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021) (citation omitted). The Act's warning requirement cannot satisfy this demanding standard, which "is fatal in fact absent truly extraordinary circumstances." *FSC*, 606 U.S. at 485. "In the First Amendment context," the Supreme Court

has "held only once that a law triggered but satisfied strict scrutiny." *Id.* at 484.

Even assuming that commercial-speech intermediate scrutiny applied, Defendant cannot demonstrate that the Act "directly and materially advanc[es] the asserted governmental interest," and "is not more extensive than necessary." *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555-56 (2001) (citation omitted). Plus, the compelled speech is "unjustified [and] unduly burdensome" if *Zauderer* review applied. *NIFLA*, 585 U.S. at 778.

1. Colorado lacks a sufficient governmental interest in compelling covered websites to publish the State's messages. To satisfy any form of heightened First Amendment scrutiny, Colorado must "specifically identify an actual problem in need of solving." *Brown*, 564 U.S. at 799 (citation modified); *see Reilly*, 533 U.S. at 555 (under commercial speech intermediate scrutiny, "a governmental body . . . must demonstrate that the harms it recites are real" (citation omitted)).

Although "a State possesses legitimate power to protect children," *Brown*, 564 U.S. at 794, it may not "protect the young from ideas or images that a legislative body thinks unsuitable," *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213 (1975).

Here, the government does not have a sufficient interest in forcing websites to disseminate information to their users about the use of social media when many private sources are already available to achieve the same end. Many covered websites already publish information about online use, men-

tal health, and well-being. *See supra* p.6. Families also have many tools available to ensure that minor children are responsibly using the internet. *See supra* pp.6-7. Those are precisely the kinds of private parental tools that the Supreme Court has endorsed over governmental intervention. *See, e.g.*, *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 826 (2000). Whatever "modest gap" the available resources leave open, if any, filling it "can hardly be a compelling state interest." *Brown*, 564 U.S. at 803.

2. The district court correctly concluded that the Act's "compelled speech requirement is not the least restrictive means available for advancing" Colorado's interests. App.2:377.

It "is evident that Colorado had other options at its disposal for advancing its goal of protecting the health and well-being of its children from the potential adverse effects of social media use." App.2:378. One option was for Colorado to "provide[] minors with these disclosures itself." App.2:377. Through its creation of the Act's resource bank, Colorado has shown that it is capable of conducting its own "public-information campaign." *NIFLA*, 585 U.S. at 775; *see* App.2:377-78; *accord Bonta I*, 113 F.4th at 1121; *Jones*, 822 F. Supp. 3d at 676; *Reyes*, 748 F. Supp. 3d at 1127. Colorado could put its warnings about social media out on its own websites. Public officials could include these warnings in their own social media posts and in their own speeches, letters, and op-eds. Colorado could run its own ads on television, radio, billboards, or even online. Colorado could even require schools to provide digital literacy instruction to students and the broader public about

technology and social media use. *See, e.g.*, ExcelinEd, State Approaches to Digital Literacy Instruction (Feb. 2024), https://perma.cc/3237-QQRP. Another option would be for Colorado to "incentivize[]" third parties or "social media companies to voluntarily provide these disclosures to . . . minor users." App.2:377; *see Reyes*, 748 F. Supp. 3d at 1127.

Furthermore, NetChoice members' self-regulation is extensive, as covered websites already engage in content moderation of harmful speech, provide parental controls and other tools, and provide information to users about responsible and safe use of social media. *See supra* pp.6-7. The Supreme Court has recognized that "voluntary" self-regulatory efforts are preferable to government intervention. *Brown*, 564 U.S. at 803.

And with respect to each of these alternatives, "[i]t is no response that [they] require[] a consumer to take action, or may be inconvenient, or may not go perfectly every time." *Playboy*, 529 U.S. at 824. Any contrary argument "misstates the strict scrutiny standard." App.2:378.

3. The Act is also not properly tailored under any level of heightened scrutiny because it is both "overinclusive" and "underinclusive." *Brown*, 564 U.S. at 805.

The Act is overinclusive under any level of heightened scrutiny because its compelled warning requirements are "more extensive than necessary to serve [any] interests that support" them. *Reilly*, 533 U.S. at 555-56.

First, the Act compels speech from an overbroad collection of websites based on a concern that *some* uses of *some* websites *sometimes* may harm *some*

users. Defendant's brief illustrates the point well: To justify the Act, Defendant references only *four* services that he contends are harmful. Amici do much of the same. *E.g.*, CommonSense.Br.5-23. That is not even all of the 10 regulated services that NetChoice identified as belonging to its members in the district court. Even assuming that there were a sufficient factual basis to compel speech from those four services (there is not), the State must do more than point to those four websites to compel speech from many more.

Defendant has not carried the burden of demonstrating that the full range of services regulated by the Act poses harms sufficient to justify the Act's compelled speech. The Act does not purport to identify particular websites that are harmful to minors or even limit its coverage to websites with particular purportedly harmful features. *Contra* CommonSense.Br.9-23 (addressing various "design features"); States.Br.6-11 (similar). Instead, it indiscriminately targets websites that disseminate a broad range of protected speech and allow users to "interact socially with each other." § 6-1-1601(4)(a)(IV). Nothing in the record substantiates the notion that mere interactivity alone is harmful. Relatedly, the Act requires warning notifications on all covered websites, although much of the literature on social media concerns only a handful of services.

Second, the Act requires warning notifications for accessing large swaths of valuable, protected, and entirely innocuous speech. For example, it would require warning notifications for a 17-year-old watching physics lectures by Stephen Hawking on YouTube for more than an hour, or a 16-year-old mark-

ing herself safe from a natural disaster on Facebook in the middle of the night.

Third, there is no evidence the Act's compelled warnings will be effective. Research suggests otherwise: because of "the accumulation problem," consumers today "confront so many disclosures daily . . . that they could not attend to (much less master) more than a few [disclosures] even if they wanted to." Omri Ben-Shahar, *More Than You Wanted to Know: Failure of Mandated Disclosure*, Harvard Law School Forum on Corporate Governance (May 6, 2014), https://perma.cc/WXG8-BB4W.

Finally, the Act is "seriously underinclusive." *Brown*, 564 U.S. at 805. The Act's central definition and that definition's many exclusions create wide gaps in the State's regulatory regime. *See Sorrell*, 564 U.S. at 573 (citation omitted) (explaining that speech regulation requires a "coherent policy"); *Griffin II*, 2025 WL 978607, at *11-12; *Reyes*, 748 F. Supp. 3d at 1128; *Paxton*, 747 F. Supp. 3d at 1037-38. Glaringly, the Act's regulatory regime entirely excludes websites that would otherwise meet the Act's "social media platform" definition, but have 100,000 or fewer "active users in Colorado." § 6-1-1601(4)(a)(I); *e.g.*, App.1:210 ¶ 60. Nor does the Act apply to users spending multiple hours on gaming websites or streaming shows on Hulu. *Jones*, 822 F. Supp. 3d at 676-77.

Judge Clay's solo opinion in *Yost* upholding Ohio's distinct law under strict scrutiny is not to the contrary. *NetChoice, LLC v. Yost*, 2026 WL 1758907, at *12-15 (6th Cir. June 18, 2026). No other panel member joined that reason-

ing. And for good reason. Strict scrutiny is "the most demanding test known to constitutional law," and is "fatal in fact absent truly extraordinary circumstances." *FSC*, 606 U.S. at 484-85. The notion that compelling speech from services as distinct as Pinterest and Nextdoor is the least restrictive means of protecting children does not pass the straight-face test.

4. Even if *Zauderer* scrutiny applied, the Act's compelled warnings are "unjustified and unduly burdensome." *NIFLA*, 585 U.S. at 778; *contra* Scholar.Br.20-22. The Act's compelled-speech "functions" threaten to "drown[] out" the speech that covered websites present to users. *Id.*; *see Am. Beverage Ass'n v. City & Cnty. of S.F.*, 916 F.3d 749, 757 (9th Cir. 2019) ("the contrasting rectangular border containing a warning that covers 20% of the advertisement [would] drown out Plaintiffs' messages" (cleaned up)). Both options require websites to display detailed information opining on highly controversial and complicated research—and then to repeat that information at some kind of regular "interval[]." § 6-1-1601(5)(a). And § 6-1-1601(1)(b) requires a "pop-up" or "full screen notification" every thirty minutes. Both options would substantially interfere with covered websites' dissemination of fully protected speech. *Moody*, 603 U.S. at 711.

Defendant's attempt to trivialize the Act's burden on protected speech proves the point. Some covered websites may disseminate speech "via notifications, posts on their platforms, advertisements, and traditional media." AG.Br.34. But requiring websites to interject the Act's detailed warnings into that substantial amount of protected speech significantly interferes with

websites' editorial discretion, their compiling and curating of speech, and users' receipt of that speech. *See Moody*, 603 U.S. at 716-17, 728. And as explained above, *see* p.20, the Act's burden is not lessened because platforms purportedly "remain free to speak to users about their own views on the health benefits of social media." AG.Br.34.

C. The district court correctly concluded that the Act is likely facially invalid.

The district court correctly concluded that Colorado's Act should be "struck down in its entirety" because its "unconstitutional applications substantially outweigh its constitutional ones . . . judged in relation to the statute's plainly legitimate sweep." *Moody*, 603 U.S. at 723-24 (citation omitted); App.2:361.

1. The First Amendment facial-challenge inquiry "first" asks what "actors" and "activities" the Act regulates. *Moody*, 603 U.S. at 724. Defining the Act's scope allows the court to determine which applications of the law implicate the First Amendment. This is a question of statutory interpretation—not empirical proof. *Id.* ("The first step in the proper facial analysis is to assess the state laws' scope" by referencing the law's "face"); *United States v. Stevens*, 559 U.S. 460, 474 (2010) ("'[T]he first step in overbreadth analysis is to *construe the challenged statute*.'" (emphasis added) (citation omitted)).

That inquiry is straightforward: The Act's compelled-speech requirements implicate the First Amendment's protections in *every* application. *See supra* pp.13-16. The Act's "scope and application are uniform in all material

respects, irrespective of the regulated social media platforms' specific attributes or content-moderation practices." App.2:361. A state law requiring warning labels appended to all books would not require plaintiffs to exhaustively catalog every book available in the State. The fact that such a law (1) would compel speech (2) appended to books is sufficient to show the same First Amendment injury across the board. Here too, Colorado's Act does not present a situation in which some applications of the law may be constitutional merely because they do not trigger any First Amendment scrutiny whatsoever. *Cf. Moody*, 603 U.S. at 724.

The "next" step in the facial-challenge analysis is to compare the Act's unconstitutional applications to any constitutional ones, asking whether the former "substantially outweigh" the latter. *Id.* Where a law fails strict First Amendment scrutiny, the law is unconstitutional in *every* application. If "a plaintiff shows that a statute is content based and the government fails to show that the restriction satisfies strict scrutiny, the plaintiff prevails. . . . Thus, if a court concludes that a content-based speech restriction fails strict scrutiny, the analysis ends. The law is facially invalid." *Imperial Sovereign Ct. of Mont. v. Knudsen*, 170 F.4th 820, 845 (9th Cir. 2026) (citations omitted); *see Brown*, 564 U.S. at 799, 805 (law facially unconstitutional because State failed to "demonstrate that it passes strict scrutiny").

2. Defendant confuses this analysis. He suggests that the Act's purported flexibility means that some websites' compelled warnings "could be factual and uncontroversial" under *Zauderer* while "others might not be." AG.Br.28.

The First Amendment facial-challenge analysis exists, in part, to resist such gambits and "'provide breathing room for free expression.'" *Moody*, 603 U.S. at 723 (citation modified).

At core, Defendant misunderstands the relevant applications of the law: whether the State can force platforms to opine on the highly controversial topics demanded by the Act. Here, the Act requires that each regulated service's disclosure do the same thing—"provide minors with data-based information about the impacts of social media use on their mental and physical health." App.2:362. Nothing here turns on precisely what "specific language," AG.Br.28, regulated services may use to comply with the Act. That is why the district court rightly rejected this argument, explaining that the "flexibility" of the Act's requirements "is of no constitutional moment" because "[t]he constitutional quandary" is that the Act "requires social media companies . . . to speak at all," and just because the "warnings . . . may differ in some minor respects" does not change the fact that they "must all share the same salient hallmark." App.2:362-63, 365.

Defendant's view of the analysis would have two perverse results. First, the First Amendment facial-challenge standard would allow the government to essentially avoid judicial review of compelled-speech mandates. So long as the government permits regulated entities to choose the words they use to speak the State's message, the permutations of the English language foreclose a facial challenge. The potential abuses of this view are evident.

Second, Defendant's view could require regulated websites to first identify the precise speech they would engage in before challenging the Act's unconstitutional compelled-speech requirement. This would compound the First Amendment violations by compelling these websites to engage in the speech this lawsuit seeks to prevent.

Tellingly, the examples of purportedly constitutional applications of the Act Defendant proposes do not pass constitutional scrutiny. AG.Br.28. Take the following example: "Research shows that prolonged daily use of social media can disrupt opportunities for exercise and interfere with sleep." AG.Br.28. For one, Defendant does not identify for which platforms this would be factual and uncontroversial. This warning also contains no information about: (1) what studies the warning references; (2) the methodology of the studies; (3) the population(s) of users the studies analyze; (4) the magnitude of the studies' purported showings; (5) contrary studies; (6) what services the studies purport to describe; (7) what "prolonged daily use" entails; and (8) other critical information necessary for users to assess the content of the State's warning.

In sum, it does not matter how a platform frames the warning—the constitutional infirmity will exist every time because the website is being forced to speak.

II. As an alternative basis for affirming the district court's order, the Act is unconstitutionally vague.

If the Court does not affirm on First Amendment grounds, it may nonetheless affirm on the basis that the Act is unconstitutionally vague.[11] The Act's coverage definition and operative provisions fail to give covered services adequate notice of whether they are subject to the Act and what the Act requires.

A statute is unconstitutionally vague if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) (citation omitted). Where government is regulating speech, the vagueness doctrine "demands a greater degree of specificity than in other contexts." *Parents Defending Educ. v. Linn Mar Cmty. Sch. Dist.*, 83 F.4th 658, 668 (8th Cir. 2023) (citation modified). Thus, in the First Amendment context, a facial vagueness challenge "is available" when a law "reaches a substantial amount of constitutionally protected conduct." *Jordan v. Pugh*, 425 F.3d 820, 828 (10th Cir. 2005) (citation omitted). In that context, the concern is that "a vague statute may be functionally overbroad" such that "it causes affected persons to act as though the statutory language had the broadest possible meaning." *Id.*

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[11] The district court did not reach this issue. App.2:358 n.2. Nevertheless, this Court may affirm on any ground supported by the record. *E.g.*, *Fontenot v. Crow*, 4 F.4th 982, 1067 n.53 (10th Cir. 2021).

A. The Act's coverage definition fails to give covered companies fair notice of whether they are subject to the Act at all. The statute defines "social media platform" by reference to four inclusion criteria, § 6-1-1601(4)(a), and then excludes platforms whose "predominant or exclusive function" falls within any of 17 enumerated categories. § 6-1-1601(4)(b).

The phrase "predominant or exclusive function" is the Act's critical operative term for determining coverage, but the Act leaves that term entirely undefined. In doing so, the Act leaves services guessing whether they are in fact covered by the Act. Many websites potentially subject to the Act simultaneously offer services that fall within the Act's coverage provisions and that fall within its exclusions. For example, many people use LinkedIn for "professional networking," § 6-1-1601(4)(b)(XIV), while others use it for social interaction, § 6-1-1601(4)(a)(IV). Likewise, Reddit hosts dedicated communities for "academic . . . research," § 6-1-1601(4)(b)(XV), alongside general social discussion. Under § 1601, these platforms cannot determine with any reasonable certainty whether they are covered because the statute provides no guidance on how to measure "predominance" (user time, revenue, number of interactions, stated platform purpose, etc.).

The Act's coverage definition is also vague in that it turns on whether a website permits use of the website "for the purpose of" allowing the creation, sharing, and viewing of user-generated content. § 6-1-1601(4)(a)(II). The Act is ambiguous as to whose "purpose" governs. Again, a platform de-

signed primarily for professional networking, for example, might be used by many of its users primarily for social interaction, or vice versa.

In *Griffin II*, the court held that a coverage provision turning on a platform's "primary purpose" was unconstitutionally vague because the term was undefined and "critical to determining which entities fall within [the Act's] scope." 2025 WL 978607, at *15-16. The court further found that the ambiguity was compounded by uncertainty about whose purpose governs—the platform's or the user's—in determining whether a service was covered. *See id.* at *16 (holding that law was "ambiguous as to *whose* . . . 'primary purpose' is being considered—the user in creating the account or the company in making the forum available"). Both of those defects are present in Colorado's use of the "predominant or exclusive function" and "purpose" here.

B. The Act's operative compliance provisions are also vague in that they fail to give covered companies fair notice of what they must—and cannot—say. The Act provides no way for covered websites to know whether the substance or formatting of the Act's required warning will be deemed compliant with the Act by the Attorney General.

Defendant appears to concede that both options require websites to inform users about "the impact of social media on the developing brain and the mental and physical health of youth users." § 6-1-1601(2); *see* AG.Br.10, 28-30. Even if true, websites still do not know what information about users'

"engagement in social media" will be sufficient to comply with the Act. § 6-1-1601(2).

Defendant touts the Act's vagueness as providing websites "flexibility." AG.Br.1, 9. But that fails to consider the lack of notice and threat of enforcement facing covered websites. Defendant claims the Act provides websites a "range of possibilities" and even permits websites to "speak to users about their own views on the health benefits of social media." AG.Br.28, 34. But when the district court asked Defendant's counsel whether a website could say "we were required to say this by the government, and we really don't think there's an empirical basis for it," Defendant could not say definitively whether such a statement "would" or "would not qualify." App.2:325-26. This exchange illustrates the problem: if the Attorney General cannot identify what complies and what does not, covered platforms facing $20,000-per-transaction penalties cannot either.

Defendant claims that any vagueness argument was premature because the State will provide standards to further define the requirements under the Act. App.2:248-49. But the standards required by the Act are limited and will not cure the Act's inherent vagueness problems. The Act requires that the standards "recommend intervals for notification frequency" for the first website-created function and "[p]rovide sample messaging for the content of the notification," § 6-1-1601(5)(a)-(b), but these recommendations will not define what is acceptable under the Act. Nor do they address questions of counter-messaging or the extent to which platforms may contextualize the

compelled disclosure. Defendant cannot rely upon the promise of future guidance—itself non-binding and limited in scope—to cure present vagueness. Websites facing $20,000 per violation must be given greater certainty.

III. The remaining equitable factors favor NetChoice.

Defendant conceded that if NetChoice showed a likelihood of success on the merits, the remaining preliminary injunction factors were established. App.2:249 n.8, 335. "In the First Amendment context, the likelihood of success on the merits will often be the determinative factor." *Verlo v. Martinez*, 820 F.3d 1113, 1126 (10th Cir. 2016) (citation modified). Thus, this Court need not address the remaining factors. Regardless, NetChoice satisfies each of them.

First, absent an injunction, NetChoice's members face irreparable harm. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020). Preventing First Amendment harms is so important that "most courts hold that no further showing of irreparable injury is necessary." *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012) (citation omitted). Every day that platforms are forced to speak the State's preferred message, they face the unconstitutional choice of complying (sacrificing First Amendment rights) or refusing (risking $20,000-per-transaction civil penalties). Being put to that choice imposes irreparable harm. *See Chamber of Com. v. Edmondson*, 594 F.3d 742, 756 (10th Cir. 2010).

The Act also imposes compliance costs "with no guarantee of . . . recovery." *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 765 (2021). Websites must expend resources to provide warning notification functions. App.1:174-76 ¶ 40.c-d; App.1:181 ¶ 10; App.1:211 ¶ 66.

Second, the equities favor NetChoice. *See Aposhian v. Barr*, 958 F.3d 969, 978 (10th Cir. 2020) (equitable factors "merge" where "the government is the opposing party" (citation omitted)). Defendant suffers no cognizable harm from being enjoined from enforcing an unconstitutional law. *Cuomo*, 592 U.S. at 19. By contrast, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Awad*, 670 F.3d at 1132.

* * *

The district court's injunction has prevented the State from forcing covered platforms to opine on matters of substantial controversy. That injunction should remain in place as litigation proceeds.

CONCLUSION

The Court should affirm.

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Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-Appellee NetChoice agrees with Defendant-Appellant that this case—and the important constitutional questions it presents—would benefit from oral argument.

Certificate of Service

On July 10, 2026, this brief was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Tenth Circuit CM/ECF User's Manual Sec. II.L; and (2) the document has been scanned with the most recent version of a commercial virus scanning program and is free of viruses.

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Certificate of Compliance

This brief complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 12,984 words, excluding the parts of the brief exempted by Rule 32(f); and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Palatino Linotype) using Microsoft Word (the same program used to calculate the word count).

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