

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

NETCHOICE,

Plaintiff,

v.

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

Defendants.

Civil Action No. 5:25-cv-05140-TLB

**REPLY IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

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INTRODUCTION

Arkansas’s opposition brief defends a statute starkly different than the one the state legislature enacted. Act 900 establishes a “strict liability” regime under which “social media companies” face draconian civil and criminal penalties for “engag[ing] in practices” that “evoke any addiction or compulsive behaviors” in a single minor. Ark. Code §4-88-1402(d)(1); *see id.* §1403(b)(2)(C). On the state’s telling, however, the law prohibits only practices “that are *intended to cause* minor users to become addicted *to social media*.” Dkt.56 (“Opp.”) at 27-28 (emphasis added). That is simply not what the statutory text says. Similarly, the state suggests that Act 900 is focused on protecting minors who hold accounts on covered websites, Opp.47-48—even though the statutory text expressly covers a “minor user” who “view[s] ... posts and content on a social media platform but *is not an account holder*,” Ark. Code §§4-88-1401(12) (emphasis added), 1402(d)(4)(A).

Arkansas’s effort to rewrite Act 900 is understandable, as the statute that the legislature actually passed is indefensible. Like Act 901’s restriction on purportedly addictive “features” that this Court enjoined less than three months ago, Act 900’s amorphous ban on “practices” that “evoke any addiction or compulsive behaviors” is breathtakingly overbroad and hopelessly vague. *Cf.* Dkt.47 at 22-25, 27-28. Like Arkansas’s original “Social Media Safety Act” (Act 689 of 2023), Act 900 “draws both content-based and speaker-based distinctions,” triggering “strict scrutiny.” *NetChoice, LLC v. Griffin*, 2025 WL 978607, at *9-10 (W.D. Ark. Mar. 31, 2025); *see* Ark. Code §§4-88-1401(11)(A)(i), (iv), (B), 1402(d), 1403(d). And Act 900’s requirement that covered websites “[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,” Ark. Code §4-88-1402(d)(4), is a classic example of compelled speech that triggers—and fails—strict scrutiny. In short, the third time is not the charm:

Just as it did with Act 689 and Act 901, this Court should preliminarily enjoin enforcement of the new obligations imposed by Act 900, codified at §4-88-1402(d).

ARGUMENT

I. NetChoice Is Likely To Succeed On The Merits Of Its First Amendment Claim.

A. Sections 1402(d)(1) and (d)(3) Violate the First Amendment.

1. The addictive-practices provisions burden an overwhelming amount of First Amendment speech.

Sections 1402(d)(1) and (d)(3) of Act 900 burden immense amounts of protected expressive activity. While these provisions are so broad and vague that it is difficult to know exactly what they prohibit, the statute expressly identifies “notifications, recommended content, artificial sense of accomplishment,” and “engagement with online bots that appear human” as “practices” that Arkansas believes “evoke ... addiction or compulsive behavior” in minors. Ark. Code §4-88-1402(d)(1). Each of these “practices” is a form of protected speech, *see* Dkt.52 (“PI.Br.”) at 14-15, so the state’s efforts to restrict them plainly implicate the First Amendment. This Court already held as much in the context of Act 901’s prohibition on “designs, algorithms, or features that cause a user to ‘[d]evelop or sustain an addiction to [a] social media platform.’” Dkt.47 at 20; *see id.* at 22-24 (holding that §1502(a)(4) triggers—and fails—First Amendment scrutiny). There is no reason for a different result here. Indeed, §1402(d) is even more extreme than §1502(a)(4) in several respects: It is not limited to practices that cause addiction to *a social media website*, but reaches those that “evoke *any* addiction or compulsive behaviors” (emphasis added); it is a strict liability offense; and it carries crushing civil penalties (\$10,000 per violation) with potential criminal sanctions to boot. *See* PI.Br.15-16. The addictive-practices provisions seriously burden protected speech.

Arkansas's efforts to avoid this conclusion mangle the statutory text beyond recognition. First, despite the legislature's express command that "a violation of this *subchapter*"—i.e., *any* provision of Act 900—"is a strict liability civil offense," Ark. Code §4-88-1403(b)(2)(C), the state tries to conjure up a scienter requirement. *See* Opp.4, 6, 20-22, 26, 46-47, 50. It begins by pointing to §4-88-101(2), which provides that Chapter 88 of the Arkansas Code restricting "deceptive trade practices" "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 advertising or practice." Opp.4, 22. This is a limited carveout that would, for example, insulate TV stations, newspapers, and websites from liability for carrying an advertisement that they did not know was deceptive. It does not somehow transform Act 900's broad restriction on "evok[ing] any addiction or compulsive behaviors" in *a single minor* into a "prohibition against engaging in practices *intended to cause* an addiction or compulsive behavior in minors." *Contra* Opp.20 (emphasis added). Section 4-88-101(2) requires only that the regulated entity "have actual knowledge of the ... design" of the prohibited "practice," Ark. Code §4-88-101(2), and NetChoice members obviously know that their online services use notifications, content-recommendation algorithms, likes, view counts, etc. Furthermore, "a basic canon of statutory construction is 'that the specific governs the general.'" *Cont'l Res., Inc. v. N.D. Bd. of Univ. & Sch. Lands*, 136 F.4th 778, 785 (8th Cir. 2025). Section 101(2)'s overarching limitation cannot possibly negate Act 900's express imposition of "strict liability" for "social media compan[ies]" that engage in purportedly addictive "practices."

Next, Arkansas attempts to insert a scienter requirement into §1402(d)(1) by seizing on the verb "to evoke." According to the state, when the statute says that social media websites must "not engage in practices to evoke any addiction or compulsive behaviors," it really means that they

must not engage in practices “*for the purpose of causing*” any addiction or compulsive behaviors. Opp.21 (emphasis added). “The problem with this approach is the one that inheres in most incorrect interpretations of statutes: It asks [the Court] to add words to the law to produce what is thought to be a desirable result.” *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 774 (2015). By the state’s own account, “to evoke” means “to cause,” “[t]o give rise to,” or “to produce”; it does not contain a purpose requirement. *See* Opp.21 n.5. And the notion that “[t]o” is the operative word” here, Opp.21, is nonsensical. The statute does not use “to” as a “function word to indicate purpose”; it simply uses the infinitive “to evoke.” *Contra* Opp.21. Moreover, the Arkansas legislature plainly knows how to insert a scienter requirement when it wishes to do so—as evidenced by its use of such requirements in Act 901 (which was enacted in tandem with Act 900). *See* Ark. Code §4-88-1502(a) (“knows, or should have known”); Ark. Code §4-88-1503(a) (“knowingly and willfully”). The state’s effort to read a purpose requirement into Act 900’s use of “to evoke”—notwithstanding the statute’s express imposition of strict liability—strains credulity. Even if §1402(d)(1) *did* contain a knowledge or purpose requirement, it would not save the statute from triggering—and failing—First Amendment scrutiny. *See* Dkt.47 at 24.

Arkansas further attempts to narrow Act 900 by insisting that it addresses only “addiction *to social media platforms*,” not addiction to other activities. Opp.22-23, 48 (emphasis added). Again, that impermissibly adds words to the statute, which by its terms forbids “engag[ing] in practices to evoke *any* addiction or compulsive behaviors” in an Arkansas minor. Ark. Code §4-88-1402(d)(1) (emphasis added); *accord* Ark. Code §4-88-1402(d)(3) (restriction on “causing minors to engage in compulsory or addiction-driven behavior”—full stop). Arkansas claims that §1402(d)(1) should be read in light of “surrounding provisions about nighttime notifications and dashboards tracking usage,” which supposedly suggest that the legislature was concerned only

with “addiction to social media platforms.” Opp.22-23. But such inferences have no place where, as here, the statutory text “is plain and unambiguous.” *Echols v. State*, 686 S.W.3d 790, 798 (Ark. 2024); *see also, e.g., Lomax v. Ortiz-Marquez*, 590 U.S. 595, 600 (2020) (“[T]his Court may not narrow a provision’s reach by inserting words Congress chose to omit.”). Other nearby provisions demonstrate that the Arkansas legislature knows how to limit a provision to cover “addiction to [a] social media platform” when it wishes to do so. Ark. Code §4-88-1502(a)(4) (emphasis added). And giving effect to the plain language of §§1402(d)(1) and (d)(3) hardly “def[ies] common sense” or “produce[s] absurd results,” Opp.22-23; after all, §§1502(a)(1) and (2) make plain that the Arkansas legislature *is* concerned that social media might “cause[]” other forms of addiction or compulsion, such as drug abuse or eating disorders.

After attempting to rewrite the statute, Arkansas tries to evade First Amendment scrutiny by asserting that “Act 900’s addictive-practices provisions apply to conduct, not speech.” Opp.23. That argument falls flat. The state begins by identifying a handful of “design features” that it says “do not implicate speech.” Opp.24. Many of these examples are dubious. “Streaks” involve the website’s own speech; they communicate information about the user’s past activity. “Filters” facilitate user expression by transforming pictures into new artistic forms of expression. *Cf. Hoffman v. Cap. Cities/ABC, Inc.*, 255 F.3d 1180, 1183 (9th Cir. 2001) (holding that filtered images are protected speech). Artificial-intelligence programs such as chatbots are expressive because websites design them to communicate certain messages in line with that website’s standards. Dkt.52-4 (“Cleland.Supp.Decl.”) ¶41. Auto-play, infinite scroll, and pull-to-refresh directly implicate a website’s editorial discretion in choosing “which third-party content those feeds will display, or *how the display will be ordered and organized.*” *Moody v. NetChoice, LLC*, 603 U.S. 707, 740 (2024) (emphasis added). And limiting practices like autoplay and infinite scroll “would

necessarily require [social media websites] to publish less third-party content” to its users. *See In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 753 F.Supp.3d 849, 881 (N.D. Cal. 2024). Moreover, it is difficult to see how “data-collection practices,” Opp.24, could “evoke ... addiction or compulsive behavior” in a minor, Ark. Code §4-88-1402(d)(1).

Regardless, even assuming *arguendo* that §§1402(d)(1) and (d)(3) could be applied to a few types of non-expressive conduct, their core applications implicate huge amounts of protected speech. As this Court held with respect to §1502(a)(4), a host of purportedly addictive practices, such as content-recommendation algorithms and “likes,” “shares,” and “comments,” plainly involve expressive activity. *See* Dkt.47 at 22-24. Indeed, the state does not seriously dispute that the four practices specifically identified in the statute—“notifications, recommended content, artificial sense of accomplishment, [and] engagement with online bots that appear human”—*all* involve protected speech. *See* Opp.25-26. And it is immaterial whether §§1402(d)(1) and (d)(3) “categorically prohibit social media platforms” from engaging in these activities, Opp.26, as it is black-letter law that “burden[s]” on protected speech trigger First Amendment scrutiny just as much as “bans.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565-66 (2011); *accord Free Speech Coal. v. Paxton (FSC)*, 606 U.S. 461, 483 (2025).

Arkansas’s contention that Act 900’s restrictions are “plainly incidental to [its] regulation of conduct,” Opp.25, is also unavailing. As explained, the addictive-practices provisions specifically target expressive activity (e.g., “notifications” and “recommended content”) by companies that are in the business of “facilitat[ing] ... interaction, expression, or communication.” Ark. Code §§4-88-1401(11)(A)(i), 1402(d)(1). That is a far cry from the types of restrictions on conduct that have been deemed to restrict speech only incidentally. *Cf. Sanderson v. Hanaway*, 163 F.4th 1101, 1106 (8th Cir. 2026) (“[L]aws banning the *conduct* of discrimination in the

workplace would incidentally prevent the *speech* of posting a sign that says, ‘Whites Only.’”).¹ The Supreme Court’s recent decision in *FSC* confirms as much. The Texas law at issue there required “proof of age to access content that is obscene to minors.” *FSC*, 606 U.S. at 482. Because the law “[o]n its face ... regulate[d] only speech that is obscene to minors,” the burden on the right of adults to access that speech was “only incidental to the statute’s regulation of activity that is not protected by the First Amendment.” *Id.* at 483. Even so, the Court held that the law triggered heightened scrutiny because of “the incidental burden that age verification necessarily has on an adult’s First Amendment right to access [that] speech.” *Id.* at 495. Act 900’s *direct* restrictions on huge swaths of fully protected speech trigger First Amendment scrutiny *a fortiori*.

2. The addictive-practices provisions are content based, triggering strict scrutiny.

Sections 1402(d)(1) and (d)(3) not only burden a breathtaking amount of First Amendment activity; they do so on the basis of content and speaker, triggering strict scrutiny. PI.Br.17-18. These provisions are content based in several respects. First, they apply only to companies that “facilitate *user-to-user*, *user-to-group*, or *user-to-public* interaction, expression, or communication.” Ark. Code §4-88-1401(11)(A)(i) (emphasis added). “This privileges institutional content creators—movie and TV studios, mainstream media outlets, and traditional journalists—over the Soundcloud artist, the TikTok chef, and the citizen journalist.” *Griffin*, 2025 WL 978607, at *9. Second, §§1402(d)(1) and (d)(3) are subject to content-based carveouts:

¹ Arkansas’s extended discussion of *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949), underscores the weakness of its position. That decision predates the development of modern First Amendment doctrine, and its holding has long “been the subject of much confusion.” *King v. Gov. of State of N.J.*, 767 F.3d 216, 225 (3d Cir. 2014), *abrogated on other grounds by* 585 U.S. 755; *see also* Eugene Volokh, *Speech as Conduct: Generally Applicable Laws, Illegal Courses of Conduct, “Situation-Altering Utterances” and the Uncharted Zones*, 90 Cornell. L. Rev. 1277, 1314-22 (2005) (describing *Giboney* as “inconsistent with modern First Amendment Law”). It does not govern this case.

Section 1403—which creates liability for violations of §1402—exempts “news-gathering organizations” and any “news or public interest broadcast, website video, report, or event.” Ark. Code §4-88-1403(d). “[A]n email service provider, a not-for-profit organization, a public or private school, [and] business-to-business software” (among others) are also exempt. Ark. Code §4-88-1401(11)(B). Third, the restriction of speech that allegedly leads to “addiction” and “compulsive behaviors” is also content based, as whether an algorithm (or other practice) is “addictive” necessarily turns on the content of the speech it recommends. *See* PI.Br.18.

Arkansas has no meaningful response to NetChoice’s lead argument. The state effectively concedes that “the addictive-practices provisions draw speaker-based lines by and through other statutory provisions” (i.e., §§1401(11) and 1403(d)), but insists that this does not make them speaker-based. Opp.28. Of course it does: The addictive-practices provisions are inextricably linked to the definition of “social media platform,” as that is what defines their scope. And, *contra* Opp.28-29, the carveouts are based on *both* speaker *and* content. Numerous courts have thus held that “[t]he elevation of ... provider-generated content over user-generated content is a content-based regulation.” *SEAT v. Paxton*, 765 F.Supp.3d 575, 592 (W.D. Tex. 2025); *NetChoice, LLC v. Reyes*, 748 F.Supp.3d 1105, 1122-23 (D. Utah 2024); *NetChoice, LLC v. Yost*, 778 F.Supp.3d 923, 953 (S.D. Ohio 2025).

That makes sense, as certain types of content and viewpoints are far more likely to proliferate on websites focused on facilitating user-to-user speech than websites focused on provider-generated speech. For example, both Disney+ and YouTube might include videos from the same documentary film. But only YouTube and Instagram will include user-generated videos critiquing the Disney-produced film as well as responsive comments from other viewers. Both the Washington Post and Reddit include content about politics. But while the Post publishes news

about politics, Reddit offers everything from memes to parodies to unfiltered debate and discussion among users. In fact, “social media” is popular in part because it provides a forum for less filtered discussions and a broader array of viewpoints than are typically reflected in the state’s preferred mediums—e.g., “traditional media” and “news-gathering organizations,” Opp.28. Restricting access to websites that disseminate user-generated content while exempting those that offer only provider-generated content necessarily “distort[s] the market for ideas.” *Turner Broad. Sys. Inc. v. FCC*, 512 U.S. 622, 660 (1994). Act 900 triggers strict scrutiny for that reason alone.

Arkansas’s observation that the addictive-practices provisions “‘apply equally’ to all social media websites and to the minor speakers who use the websites,” Opp.28, misses the point. What matters is that the Act discriminates *among* “platforms” based on the speech they disseminate. For example, the Act restricts allegedly addictive “practices” on Facebook but not WashingtonPost.com. Though both websites “facilitate user-to-user ... communication” (the Post allows account holders to comment on online articles²), the Post gets favorable treatment because it is a “news-gathering organization,” Ark. Code §4-88-1403(d)(2). That is textbook speaker-based discrimination—and content and viewpoint discrimination, to boot. *See City of Austin v. Reagan Nat’l Advert. of Aus., LLC*, 596 U.S. 61, 74 (2022) (“overt subject-matter discrimination” renders a statute “facially content based”); *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 429 (1993) (law treating “newspapers” more favorably than “commercial handbills” was content based). And Arkansas’s argument that the carveout for “news” applies only to §1403, rather than §1402, Opp.33, ignores that §1403 establishes criminal and civil liability for violations of §1402. So, §1403(d) effectively exempts “news organizations” from §§1402(d)(1) and (d)(3).

² *See* Washington Post, *Digital Commenting Community*, <https://perma.cc/9MR4-KG2S> (last visited February 26, 2026).

Arkansas alternatively insists that the Act’s speaker-based distinctions are “based on the form of or location of the expression,” rather than its content. Opp.28-29. That “is a distinction without a difference,” as this Court has already explained. *Griffin*, 2025 WL 978607, at *9. The definitional carveouts for news-gathering organizations, schools, and non-profits have nothing to do with the “form” of their (or their users’) expression, and everything to do with its communicative content. The cases Arkansas cites are inapposite. *CCLA v. Uthmeier*, 2025 WL 3458571, at *4 (11th Cir. Nov. 25, 2025)—a non-precedential stay order—is wrong and will soon be heard by a fresh panel on the merits of the state’s appeal. It is also irrelevant because the court expressly distinguished the Florida law at issue there from “other laws” regulating social media and the “accompanying district court decisions.” *Id.* at *9 n.12. *Hershey v. Jasinski*, 86 F.4th 1224 (8th Cir. 2023), involved a policy that uniformly applied to “all speakers,” *id.* at 1233, as did *Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 815-17 (1984). Here, only one group has been singled out: “social media” websites.

In sum, the state’s assertion that Act 900 “is agnostic as to content,” Opp.29, is thoroughly unpersuasive. The Act’s content- and speaker-based restrictions trigger strict scrutiny.

3. The addictive-practices provisions flunk any level of heightened scrutiny.

Sections 1402(d)(1) and (d)(3) cannot survive any level of heightened scrutiny. Strict scrutiny requires Arkansas to show that the challenged provisions are “the least restrictive means of achieving a compelling state interest.” *McCullen v. Coakley*, 573 U.S. 464, 478 (2014). Intermediate scrutiny requires Arkansas to show that they are “narrowly tailored to serve a significant governmental interest.” *Packingham v. North Carolina*, 582 U.S. 98, 105-06 (2017). The state’s asserted interests must be “unrelated to the suppression of free speech,” and its chosen

solution may not “burden substantially more speech than necessary to further those interests.” *FSC*, 606 U.S. at 495-96. The Act flunks both standards.

Arkansas does not even attempt to argue that Act 900 can satisfy strict scrutiny, and for good reason: It is “the most demanding test known to constitutional law,” and one that is “fatal in fact absent truly extraordinary circumstances.” *Id.* at 484-85. So, if this Court concludes that Act 900 “draws both content-based and speaker-based distinctions”—as it held with respect to the prior version of the statute, *Griffin*, 2025 WL 978607, at *8-10—that alone would establish that NetChoice is likely to succeed on its challenge to the addictive-practices provisions.

Even assuming that intermediate scrutiny applies, NetChoice is likely to succeed. *Cf.* Dkt.47 at 20-25 (so holding with respect to §1502(a)(4)’s prohibition on “features that cause a user to ‘develop or sustain an addiction to [a] social media platform’”). Indeed, §§1402(d)(1) and (d)(3) present an even easier case than §1502(a)(4), as Arkansas does not have a legitimate (let alone compelling) interest in preventing “*any* addiction or compulsive behaviors.” Ark. Code §4-88-1402(d)(1) (emphasis added). As explained, the text of §§1402(d)(1) and (d)(3) is not limited to social media addiction, or even to *harmful* activities, but instead would reach broad swaths of arguably “compulsive” behavior that the state has no interest in banning—e.g., using “social media” to play “engaging word and logic games” with friends “every day.” *See* Dkt.25-1 at 6; Dkt.25-2 at 2; PI.Br.19. Moreover, the addictive-practices provisions are wildly overinclusive, as they force covered entities to restrict speech whenever it could “evoke *any* addiction or compulsive behavior” in *a single* Arkansas minor—even if the speech is innocuous, or even helpful, to the vast majority of users. Ark. Code §4-88-1402(d)(1) (emphasis added); *see* Dkt.47 at 23-24 (applying similar reasoning to §1502(a)(4)). On the flipside, these provisions “are substantially underinclusive because they do not restrict identical [practices]” on “other media” (e.g., Hulu and

HBO Max). Dkt.47 at 19. The provisions also flunk narrow tailoring because parents already have a host of tools to manage their children’s social media use. *See* Pl.Br.21-22. And, independently, Act 900 is unconstitutional because it imposes strict liability for protected speech. *See* Pl.Br.22.

Arkansas’s counterarguments are not persuasive. The state asserts that it has “a compelling interest in protecting the physical and psychological well-being of minors.” Opp.30-31. Be that as it may, Arkansas has no legitimate interest in preventing the consumption of constitutionally protected speech, even if it thinks minors consume too much. That is plainly not “unrelated to the suppression of free expression.” *TikTok, Inc. v. Garland*, 604 U.S. 56, 73 (2025) (per curiam). The Supreme Court has repeatedly held that “the fear that speech might persuade provides no lawful basis for quieting it.” *Sorrell*, 564 U.S. at 576.

Regardless, Arkansas cannot show that the addictive-practices provisions are narrowly tailored to its asserted interest in protecting minors. As explained, *see supra* pp.11-12, the Act restricts far more than “practices intentionally designed to cause addiction and compulsive behavior in minors.” *Contra* Opp.31. But even if the Act were construed—or, more accurately, rewritten—as Arkansas desires, it would still be wildly overinclusive because it broadly restricts protected expressive activity (e.g., notifications and content recommendations) with respect to *all* “social media” users if it “evoke[s] addiction” in even one, or a small minority of, user(s). *Cf.* Dkt.47 at 23-24. Just as with Act 901, the state has no answer to this point.

Arkansas effectively concedes that the challenged provisions are significantly underinclusive because they do not apply to “traditional media” or to “other streaming services, like HBO Max or Hulu.” Opp.28, 32. It insists that this is not fatal because “the First Amendment poses no freestanding underinclusiveness limitation.” Opp.32. It is well established, however,

that “a law’s underinclusivity raises a red flag,” *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 449 (2015), and that “wildly underinclusive” laws “cannot survive even intermediate scrutiny.” *NIFLA v. Becerra*, 585 U.S. 755, 773-74 (2018) (striking down a law infringing on speech under intermediate scrutiny, in part, on underinclusivity grounds). The addictive-practices provisions are grossly underinclusive because, as Arkansas’s own exhibits indicate, a wide range of *non*-social media (including streaming services, “televisions,” and “video games”) raise virtually identical concerns regarding overuse. *See, e.g.*, Dkt.57-12 at 3-4; Dkt.57-8 ¶165. While overinclusivity alone would carry the day, this underinclusivity confirms the lack of narrow tailoring, even under intermediate scrutiny. *NIFLA*, 585 U.S. at 773-74.

Arkansas further argues, with little evidence, that the many controls available to parents have proven ineffective in preventing alleged addiction to social media. Opp.32. As support, it cites a single study on the costs and benefits of filters designed to prevent minors from viewing explicit content in the European Union. *See* Dkt.57-6. That study says little, if anything, about whether the very different array of tools at issue here have proven insufficient for Arkansas parents to protect their minors from alleged social media “addiction.” Educating parents and minors about the risks of spending too much time online, and promoting tools that help limit minors’ screen time, are far less restrictive means of advancing the state’s policy preference. Yet the state presents no evidence that it has even tried these alternatives, let alone that they have proven ineffective. *Cf. NetChoice, LLC v. Griffin*, 2023 WL 5660155, at *21 (W.D. Ark. Aug. 31, 2023); PI.Br.21 (citing additional cases). For all these reasons, the addictive-practices provisions are not remotely tailored to Arkansas’s asserted interest in protecting minors.

4. The addictive-practices provisions’ unconstitutional applications far outweigh any potentially constitutional applications.

Like Act 901’s ban on the “use” of addictive “features,” Ark. Code §4-88-1502(a)(4), Act

900’s ban on addictive “practices” is facially invalid. *Cf.* Dkt.47 at 24-25. Even assuming *arguendo* that §§1402(d)(1) and (d)(3) have a few constitutional applications, any such applications are far outweighed by their patently unconstitutional core applications to, *inter alia*, notifications, content-recommendation algorithms, and social-feedback features (e.g., “likes, shares, or comments,” Dkt.47 at 22). *See supra* pp.5-7. At the very least, §§1402(d)(1) and (d)(3) are unconstitutional as applied to NetChoice members when they engage in the protected activity of curating or disseminating speech. *See* PI.Br.23-24 (citing *Moody*, 603 U.S. at 740).

In response, Arkansas offers little more than conclusory assertions that NetChoice has not “satisfied its burden” to show that the law’s “unconstitutional applications outweigh [any] constitutional ones.” Opp.33-35. The state avers that the Act has “plenty of constitutional applications,” citing “autoplay” and “infinite scroll.” Opp.35. But, as discussed, those are unconstitutional regulations of speech. *See supra* pp.5-6. And §§1402(d)(1) and (d)(3) restrict far broader swaths of unquestionably expressive activity too—e.g., “notifications” and “recommended content,” Ark. Code §4-88-1402(d)(1)—which underscores that they are not remotely tailored to achieve the state’s asserted interests. Far from saving a speech restriction from facial invalidation, such vast overbreadth necessitates it. *See, e.g., Iancu v. Brunetti*, 588 U.S. 388, 398-99 (2019) (ban on “immoral or scandalous” trademarks was “substantially overbroad” despite potentially constitutional “applications to lewd, sexually explicit, or profane marks”); *United States v. Stevens*, 559 U.S. 460, 482 (2010) (statute banning “depiction[s] of ... animal cruelty” was facially unconstitutional even if a narrower ban on “crush videos” would be permissible). NetChoice has demonstrated that Act 900’s restrictions on practices that “evoke any addiction or compulsive behavior” likely violate the First Amendment.

B. Sections 1402(d)(2)(A) and (B) Violate the First Amendment.

1. The restriction on notifications and the default privacy and safety requirements trigger strict First Amendment scrutiny.

Section 1402(d)(2)(A), which generally prohibits “social media platform[s]” from sending “[n]otifications” to minors from 10:00 PM to 6:00 AM, burdens First Amendment rights in all applications because it is a direct restriction on speech. *See* PI.Br.24 (citing *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F.Supp.3d 809, 837 (N.D. Cal. 2023); *NetChoice v. Bonta*, 761 F.Supp.3d 1202, 1227 (N.D. Cal. 2024)). Section 1402(d)(2)(B), which requires “social media platform[s]” to set minors’ default “privacy and safety settings” to “the most protective level” they offer, likewise restricts protected speech in all applications. Because privacy and safety settings control the extent to which users can interact with other users and what content they can view, *see* Cleland.Supp.Decl.¶¶55-57; Dkt.52-2 (“Murphy.Decl.”) ¶¶43, 67; Dkt.52-3, (“Baird.Supp.Decl.”) ¶32, this requirement necessarily “impede[s] the availability and use of information and accordingly ... regulates speech,” PI.Br.25 (quoting *NetChoice, LLC v. Bonta*, 692 F.Supp.3d 924, 945-46, 952-43 (N.D. Cal. 2023)). Both provisions trigger strict scrutiny because Act 900’s definition of “social media platform” discriminates on the basis of speaker and content. *See supra* pp.7-10. And §1402(d)(2)(A) further discriminates based on content because of its additional carveout for “safety or privacy-related alerts.” PI.Br.26-27.

Arkansas claims that §1402(d)(2)(A)’s restriction on notifications regulates “social media platforms’ conduct, not expression.” Opp.38-39. Without citing any evidence, the state asserts that “notifications are typically automated alerts” that do not reflect websites’ own “express[ion].” Opp.38. That is wrong: “[T]he First Amendment protects” social media websites’ “choices about when and to whom to publish content notifications.” *In re Social Media*, 702 F.Supp.3d at 837. In any case, it does not change the fact that notifications *are themselves speech*. *Bonta*, 761

F.Supp.3d at 1224. Restricting notifications thus implicates not only NetChoice members’ First Amendment rights to disseminate speech (whether that is their own speech or the third-party speech of its choosing), but users’ rights to both speak and receive speech. And §1402(d)(2)(A) is not “a *content-neutral* time, place, and manner restriction.” *Contra* Opp.39 (emphasis altered). The state’s contention that Act 900 defines “social media platform” without reference to content is unpersuasive, *see supra* pp.7-10, and the state fails to develop any argument that the statutory exemption for “safety or privacy-related alerts” is content neutral. Section 1402(d)(2)(A) thus receives strict scrutiny.

Turning to §1402(d)(2)(B), which governs default privacy and safety settings, Arkansas begins by asserting that “th[e] provision does not require social media platforms to provide anything new.” Opp.36. True, but irrelevant. Just because a company already offers certain tools that let minors (and their parents) restrict who they interact with and what speech they receive does not mean that the government can *mandate* such restrictions. Arkansas also asserts that “[t]here is no way to know the practical effect of [§1402(d)(2)(B)] without the individual participation of the platforms themselves,” Opp.37, and that NetChoice has not provided enough information to support its facial challenge, Opp.42-43. Not so. NetChoice has produced uncontroverted evidence that its members’ websites have privacy and safety settings and that the “most protective settings” on any given website restrict more expressive activity than less protective settings. *See* Cleland.Supp.Decl.¶¶55-57; Murphy.Decl.¶¶43, 67; Baird.Supp.Decl.¶32. Section 1402(d)(2)(B) thus restricts speech in all its applications, regardless of the specific settings available on any given website. No additional information is needed. And, like the rest of Act 900, §1402(d)(2)(B) is infected by the content- and speaker-based definition of “social media platform” and content- and speaker-based exemptions. Strict scrutiny applies.

2. The restriction on notifications and the default privacy and safety requirements flunk any level of heightened scrutiny.

Sections 1402(d)(2)(A) and (B) flunk any level of heightened scrutiny. Arkansas does not even argue that they can survive strict scrutiny, and they also fail intermediate scrutiny. While Arkansas may have “a compelling interest in protecting the physical and psychological well-being of minors,” Opp.39, neither provision is narrowly tailored to advance that interest. Nor can these requirements be justified by Arkansas’s asserted interest in aiding parental authority. *See* PI.Br.27-28 (citing *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 799, 802-03 & n.9 (2011); *Interactive Digit. Software Ass’n v. St. Louis Cnty.*, 329 F.3d 954, 959-60 (8th Cir. 2003)). Given the relative ease with which parents or minors can silence “social media” alerts between 10:00 PM and 6:00 AM (or whenever they choose), and opt into whatever level of privacy and safety requirements they desire, neither requirement meaningfully advances the state’s asserted interests.

Arkansas also fails to establish that §1402(d)(2)(A) is narrowly tailored. The state candidly acknowledges that myriad “social media” notifications—on topics ranging from the final score of a late-evening sporting event to the next day’s carpool to “safety and privacy”—are *not* harmful to many minors, even if sent between 10:00 PM and 6:00 AM. *Compare* PI.Br.29, *with* Opp.41-42. Restricting all such notifications based on fears that *some* notifications might interfere with *some* minors’ sleep is a significantly overbroad means of protecting minors’ well-being. At the same time, §1402(d)(2)(A) is severely underinclusive. Minors remain free to “*use* social media at nighttime”—which is what the state is actually concerned about, Opp.38 (emphasis added). And all other websites (and private individuals) remain free to send minors notifications—including notifications with the exact same content—at any hour of the night. Accordingly, the notification restriction is so “wildly underinclusive” that it fails intermediate scrutiny. *Bonta*, 761 F.Supp.3d at 1227 (so holding with respect to similar California law).

Arkansas's arguments about §1402(d)(2)(B) are weaker still. The state begins by asserting that "the parental control tools already provided to parents are largely ineffective." Opp.40. If that is the problem, then it is hard to see how imposing "the most protective level of control" that the state acknowledges "is *already* offered," Opp.41, will address it. In any event, the state has provided no relevant evidence to support its claim that existing tools are "largely ineffective." *See supra* p.13. And the fact that the provision "does not impose a new standard for privacy settings," Opp.41, is irrelevant to the tailoring analysis. NetChoice is likely to succeed on the merits of its challenge to both components of §1402(d)(2).

C. The Online-Dashboard Provision Violates the First Amendment.

1. Section 1402(d)(4) triggers strict First Amendment scrutiny.

Section 1402(d)(4), which requires "platforms" to develop an "online dashboard" reporting minors' "use habits," compels speech—triggering First Amendment scrutiny—in all its applications. *See* PI.Br.31-33. Like all measures that compel speech, this requirement is "a content-based regulation," as it "necessarily alters the content of [NetChoice members'] speech." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988). It therefore receives strict scrutiny, *see, e.g., Telescope Media Grp. v. Lucero*, 936 F.3d 740, 754 (8th Cir. 2019) ("Laws that compel speech ... are subject to strict scrutiny."), which it undisputedly cannot survive.

Arkansas's efforts to avoid this straightforward conclusion rely entirely on *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985), which applied a more relaxed form of scrutiny to "a requirement that [an attorney] include in his advertising purely factual and uncontroversial information about the terms under which his services will be available." *Id.* at 651. But *Zauderer* does not apply here, as it is limited to disclosure requirements that "combat the problem of inherently misleading commercial advertisements." PI.Br.33 (quoting *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 250 (2010)). Arkansas insists

that the Supreme Court’s decision in *NIFLA v. Becerra*, 585 U.S. 755 (2018), suggests otherwise; but that is a gross misreading of that case. Indeed, *NIFLA* emphasized that the law upheld in *Zauderer* “governed only ‘commercial advertising’” and required disclosures “about the terms under which ... services will be available.” *Id.* at 768. While a few courts have stretched *Zauderer* beyond issues of misleading advertising, *see* Opp.43-44, the Eighth Circuit is not one of them. This Court should not extend *Zauderer* beyond the contexts in which the Supreme Court and the Eighth Circuit have applied it. *See* Pl.Br.33.

Furthermore, the rationale underpinning *Zauderer* is inapposite here. That case stands for the principle that “[p]urely commercial speech is more susceptible to ... disclosure requirements” than other types of speech. *Riley*, 487 U.S. at 796 n.9; *see Zauderer*, 471 U.S. at 651. Here, however, the compelled speech is not just outside the context of advertising and disclosures of terms of service; it does not even meet the Supreme Court’s definition of “commercial speech.” *See* Pl.Br.33-34. Outside of the context of commercial speech, the First Amendment applies with full force to “compelled statements of ‘fact’”—even those that a listener might find highly relevant. *Riley*, 487 U.S. at 796-98 & n.9; *accord Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp.*, 515 U.S. 557, 573 (1995). Act 900’s online-dashboard provision triggers strict scrutiny.

2. Section 1402(d)(4) cannot survive any level of scrutiny, let alone strict scrutiny.

The online-dashboard provision cannot survive any level of heightened scrutiny; indeed, it is so “unjustified” and “unduly burdensome” that it flunks even *Zauderer* scrutiny, *see* 471 U.S. at 651. Section 1402(d)(4) covers not only minors who have an account on the relevant website, but any minor “*user*”—a statutorily defined term meaning “a person who has access to view all or some of the posts and content on a social media platform but is *not* an account holder.” Ark. Code §4-88-1401(12) (emphasis added). It would therefore require covered websites to perform age-

verification on everyone who visits the site, with or without an account; track all minors’ “use habits”; post that information on a dashboard; and somehow identify each minor’s parents, provide them with that information, and give them “tools to restrict” their children’s access to the site. PI.Br.34-35. That is worlds away from the purely factual and uncontroversial disclosure requirements upheld in *Zauderer*.

Arkansas’s response—yet again—is to try to rewrite the statute. Without even mentioning the fact that the statute expressly covers minors who *are not account holders*, the state avers that its reference to “use habits” implies that it applies only to minors who have “a settled tendency” of visiting the site. Opp.45. The statutory text contains no such limitation, but that would not solve the problem anyway, as a website cannot know whether a minor has a “settled tendency” to visit it unless it first determines the age of *every* visitor and then attempts to track how often *every minor* visits. Perhaps recognizing as much, Arkansas quickly pivots to arguing that “any relief granted NetChoice should be tailored only to apply to minors who are not accountholders.” Opp.45-46. But the statute still imposes unjustified and unduly burdensome disclosure requirements (that are neither purely factual nor uncontroversial) as to account holders, so the proper remedy is to hold it facially invalid. PI.Br.35. Courts “may impose a limiting construction on a statute only if it is ‘readily susceptible’ to such a construction,” *Stevens*, 559 U.S. at 481, and §1402(d)(4) plainly is not. This Court may not “rewrite” the provision “to conform it to constitutional requirements,” as that would both invade the Arkansas legislature’s domain and “sharply diminish [its] incentive to draft a narrowly tailored law in the first place.” *Id.* Under any standard of review—even *Zauderer*—the online-dashboard requirement cannot stand.

D. Arkansas’s Threshold Arguments Fail.

Lacking any persuasive arguments on the merits, Arkansas seeks to avoid First Amendment scrutiny altogether by raising standing issues. Again, its arguments lack merit.

1. NetChoice has associational standing to assert its members' rights.

Arkansas argues that NetChoice “cannot satisfy the third prong” for associational standing because “its claims depend on individualized, member-specific facts” that “require[] participation of individual members in the lawsuit.” Opp.12-14. This Court rejected this argument in NetChoice’s challenge to the prior version of Arkansas’s “Social Media Safety Act,” *see Griffin*, 2023 WL 5660155, at *10; *Griffin*, 2025 WL 978607, at *6, and courts across the country confronting similar challenges to similar laws have as well, *see Yost*, 778 F.Supp.3d at 941; *Reyes*, 748 F.Supp.3d at 1118-19; *CCIA v. Paxton*, 747 F.Supp.3d 1011, 1029-31 (W.D. Tex. 2024); *see also NetChoice, LLC v. Fitch*, 134 F.4th 799, 805 (5th Cir. 2025). Rightly so. NetChoice’s claims do not require fact-intensive inquiries into how individual “social media platforms” operate; they instead turn on the application of well-established legal principles to the plain text of Act 900. To the extent facts are needed, they can be (and already have been) supplied through publicly available documents, a declaration from NetChoice’s general counsel, and “evidence from representative injured members,” *Griffin*, 2023 WL 5660155, at *10. This is not the rare case in which prudential considerations might preclude associational standing. *See United Food & Com. Workers Union v. Brown Grp.*, 517 U.S. 544, 556-57 (1996) (explaining that the third prong of the test for associational standing is “prudential,” not constitutional, and is “best seen as focusing on ... matters of administrative convenience and efficiency”).

2. NetChoice may also assert the rights of its members’ users.

Arkansas also contends that NetChoice lacks third-party standing to assert the First Amendment rights of the millions of Arkansans who use its members’ online services. Opp.9-12. Again, this Court has already rejected that very argument. *Griffin*, 2023 WL 5660155, at *10-12. So has every other court to consider it. *See Fitch*, 134 F.4th at 807 (“It is plain that an online platform is not barred by prudential standing when it asserts its users’ First Amendment rights.”);

accord NetChoice v. Murrill, 2025 WL 3634112, at *20-21 & n.17 (M.D. La. Dec. 15, 2025); *Yost*, 778 F.Supp.3d at 941-46; *Paxton*, 747 F.Supp.3d at 1031.

To begin, Arkansas’s argument incorrectly assumes that NetChoice asserted *only* the rights of third-party users. NetChoice has *also* asserted the rights of its members. As explained, the addictive-practices provisions (§§1402(d)(1) and (3)) burden NetChoice members’ *own* expressive activity, including notifications and content recommendations. *See supra* pp.5-7. Section 1402(d)(2)(A) directly restricts members’ notifications, and §1402(d)(2)(B) alters the curated mix of speech that they disseminate through their online services. *See supra* pp.15-16. And §1402(d)(4) compels speech by NetChoice members themselves. *See supra* pp.18-19. Of course, the burdens on Arkansans’ speech are relevant to the narrow-tailoring analysis. But NetChoice does not rely on third parties’ rights to establish standing for its First Amendment claim.

What is more—as this Court previously held, *see Griffin*, 2023 WL 5660155, at *11-12—Arkansas’s argument is foreclosed by the Supreme Court’s decision in *Virginia v. American Booksellers Ass’n, Inc.*, 484 U.S. 383 (1988). There, the Supreme Court held that “the First Amendment” allowed booksellers’ associations and bookstores to assert “an infringement of the First Amendment rights of bookbuyers,” even though (unlike here) the booksellers did not establish First Amendment standing in their own right, and the bookbuyers were capable of asserting their own rights. *Id.* at 388 n.3, 393 & n.6; *see also Brown*, 564 U.S. at 795 n.3, 805 (allowing organizations representing video game and software industries to raise First Amendment rights of minors). Without even mentioning (let alone distinguishing) *American Booksellers*, Arkansas cites non-First Amendment cases requiring litigants invoking a third party’s rights to show (1) “a close relationship with the person who possesses the right” and (2) “a hindrance to the possessor’s ability to protect his own interests.” *Opp.*9-10 (quoting *Kowalski v. Tesmer*, 543 U.S.

125, 130 (2004)). Under *American Booksellers* and its progeny, however, neither showing is required when—as here—a litigant raises a facial First Amendment challenge to a restriction on speech. See, e.g., *Fitch*, 134 F.4th at 806-07; *Ways v. City of Lincoln*, 274 F.3d 514, 518 (8th Cir. 2001); *Osediacz v. City of Cranston*, 414 F.3d 136, 140 (1st Cir. 2005); *Shimer v. Washington*, 100 F.3d 506, 508 (7th Cir. 1996).

Arkansas also argues that NetChoice “cannot establish standing to assert users’ First Amendment rights by combining associational standing and third-party standing.” Opp.11. As explained, NetChoice does not need to establish third-party standing because it has asserted its members’ *own* rights and brought a facial First Amendment challenge. See *supra* pp.5-6, 15-16, 18-19. In all events, every circuit court to consider the question has found no barrier to combining associational standing and third-party standing. See *Pa. Psychiatric Soc’y. v. Green Spring Health Servs.*, 280 F.3d 278, 293 (3d Cir. 2002); *Ohio Ass’n of Indep. Schs. v. Goff*, 92 F.3d 419, 421-22 (6th Cir. 1996); *Fraternal Ord. of Police v. United States*, 152 F.3d 998, 1002 (D.C. Cir. 1998), *aff’d in relevant part*, 173 F.3d 898, 903 (D.C. Cir. 1999); *Council of Ins. Agents & Brokers v. Juarbe-Jiménez*, 443 F.3d 103, 108-10 (1st Cir. 2006).

II. NetChoice Is Likely To Succeed On Its Vagueness Claim.

NetChoice is also likely to succeed on its claim that Act 900 is unconstitutionally vague. The Act does not define “addiction” or “compulsive behavior”; it is impossible to predict, *ex ante*, what types of speech-facilitating “practices” could lead at least one unidentified Arkansas minor to engage in such behavior; and its imposition of strict liability for such vaguely defined expressive conduct will invite arbitrary enforcement and inevitably chill a breathtaking amount of speech. See Pl.Br.35-38. To make matters worse, Act 900’s definition of “social media platform” fails to provide adequate notice of which entities it regulates, and the statute also fails to clarify the extent

to which it creates liability pertaining to minor “users” who visit covered websites without creating an account. *See* Pl.Br.38-40.

Like so much of its brief, Arkansas’s response regarding vagueness rests on tortured (and untenable) “constructions” of the statute. *See supra* pp.2-4. Liability under §§1402(d)(1) and (d)(3) does not turn on a covered entity’s “actual knowledge of its own intent motivating its own conduct,” *contra* Opp.47, but on “the sensitivities of [an] unspecified user,” Dkt.47 at 27. “Such a law is unconstitutionally vague.” *Id.* And the handful of academic articles that the state offers to try to define “addiction” or “compulsive behavior,” *see* Opp.47 & n.14, just underscore that there is no settled “understanding” of those terms. The statute is not confined to “addiction to or compulsive use *of social media*,” Opp.47-48 (emphasis added); *see supra* pp.4-5, and, even if it were, that concept is similarly up for grabs.

Arkansas’s contention that Act 900 clearly defines “social media platform,” Opp.49, also fails. As NetChoice explained, the statutory definition is written so broadly that it arguably covers many websites that virtually no one would call “social media,” such as Chess.com, ESPN, or Yahoo Sports. Instead of explaining whether such sites are covered, Arkansas suggests that no NetChoice members face this uncertainty. Yes, they do: AirBnB, Discord, eBay, Etsy, Pinterest, and Snap are among the many NetChoice members left uncertain about whether they must comply. NetChoice is not complaining that Act 900 is “vague ... in the abstract,” Opp.49. On the contrary, many NetChoice members lack fair notice of whether it covers them and, if so, what it requires.

III. Act 900’s Amendments To The Social Media Safety Act Do Not Render This Court’s Existing Permanent Injunction Ineffectual.

Arkansas also asserts that the Court’s existing permanent injunction “cannot be applied to the current statutory scheme,” Opp.14—i.e., the Social Media Safety Act, as amended by Act 900. Yes, it can: The state is currently enjoined from enforcing the age-verification and parental-

consent regime of Ark. Code §4-88-1402(a)-(c), and the constitutionality of those provisions (as amended) is currently before the Eighth Circuit in Case No. 25-1889. NetChoice does not need (and has not asked for) “a new preliminary injunction that would prevent enforcement of the age-verification and parental-consent requirements,” or a “modif[ication] of the prior permanent injunction’s scope.” *Contra* Opp.19. It seeks only a preliminary injunction preventing enforcement of the *new* obligations in Act 900, §2, codified at §1402(d). It does not need to separately challenge the heightened penalties of §1403(c) or the anti-circumvention requirements of §1405, which are inextricably linked to the unconstitutional (and enjoined) age-verification and parental-consent regime. To the extent the state wants relief from the previous injunction, it needs to convince the Eighth Circuit (or this Court) to modify that injunction.

IV. NetChoice Satisfies All Other Requirements For Preliminary Injunctive Relief.

The state’s equitable arguments warrant little discussion. Here, as is often the case, likelihood of success on the merits is “the determining factor in whether a preliminary injunction should issue.” *Phelps-Roper v. Nixon*, 509 F.3d 480, 485 (8th Cir. 2007). As in the recent, related litigation, NetChoice members and Arkansans alike face irreparable harm in the form of “loss of First Amendment freedoms.” *Griffin*, 2025 WL 978607, at *17; *Griffin*, 2023 WL 5660155, at *21. And all equitable factors “favor[] the constitutionally-protected freedom of expression.” *Nixon*, 509 F.3d at 485.

CONCLUSION

The Court should grant NetChoice’s Motion for Preliminary Injunction (Dkt.51) before April 21, 2026, when the challenged provisions of Act 900 are slated to take effect.

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