

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

NETCHOICE,

Plaintiff,

v.

MICHAEL HILGERS, in his official capacity
as Attorney General of the State of Nebraska,

Defendant.

Case No. 4:26-cv-03149

**PLAINTIFF'S REPLY BRIEF IN SUPPORT OF
MOTION FOR A PRELIMINARY INJUNCTION**

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INTRODUCTION

Nebraska’s response confirms that the Social Media Act is incompatible with the First Amendment and that preliminary relief is necessary to preserve the status quo. The Act restricts wide swaths of First Amendment activity—including on many websites that have no conceivable connection to any of the alleged harms Nebraska purports to target. Under the Act, for instance, minors must obtain parental consent before watching a religious service on YouTube, debating politics on Dreamwidth, or discussing college applications on College Confidential. Even if they secure that approval, the Act requires companies to empower parents to surveil every post a minor makes and every message a minor sends or receives, no matter the circumstances. And the Act requires all adults to verify their age before creating an account on a covered site to boot. None of that can be squared with bedrock First Amendment principles. While Nebraska insists that its goal is to “support parental rights,” Opp.6, that is not what its statute does. Laws like the Social Media Act “do not enforce *parental* authority over children’s speech”; they “impose *governmental* authority, subject only to a parental veto.” *Brown v. Ent. Merch. Ass’n*, 564 U.S. 786, 795 n.3 (2011).

Unable to deny that the Act restricts a breathtaking amount of speech, Nebraska attempts to pass off its law as a content-neutral restriction on the ability of minors to enter contracts. Opp.2-3. The state thus contends that the Act does not trigger First Amendment scrutiny at all. Opp.10, 18. Courts have repeatedly rejected that argument—and for good reason. The Act is not a generally applicable restriction on contracting with minors; it applies only to select online services where minors engage in speech. Just as with library cards, newspaper subscriptions, or any other conduct necessary to access speech, people create accounts on “social media” websites to “speak and listen.” *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017). Nebraska does not dispute

that prohibiting minors from creating accounts on those websites makes it near impossible for them to engage in the full range of social and interactive First Amendment activity that users enjoy on them—be it posting their thoughts on Instagram or communicating with friends on Snapchat.

The state’s remarkable assertion also ignores that whether a website is covered in the first place depends on its content—e.g., whether the website allows account holders to “communicate with” each other “through posts,” L.B. 383 §27(11)(a), is an “[o]nline shopping” site, or “primarily provides career development opportunities,” *id.* Any one of those content-based distinctions suffices to trigger strict scrutiny. But even if intermediate scrutiny applied, the Act would fail because it is not remotely narrowly tailored to avoid unnecessary interference with protected speech. The Act not only covers websites like Snapchat and X, but sweeps in everything from Dreamwidth to Pinterest to messaging boards like College Confidential. Nebraska makes little effort to explain why existing tools are insufficient to achieve its professed interests. And the Act’s parental supervision, age verification, and parental surveillance provisions employ the very “prophylaxis-upon-prophylaxis” approach the Supreme Court has cautioned against, *FEC v. Cruz*, 596 U.S. 289, 306 (2022), as is evident from the provisions of the Act NetChoice has not challenged—which the state all but ignores.

The Court should enjoin the Attorney General from enforcing §28(1)-(3) and §28(4)(a) and (b) of the Social Media Act against NetChoice’s members.

ARGUMENT

I. NetChoice Is Likely To Succeed On Its Claim That The Parental Consent And Age Verification Requirements (§28(1)-(3)) Violate The First Amendment.

A. The Parental Consent and Age Verification Requirements Restrict a Breathtaking Amount of Core First Amendment Activity.

Nebraska does not deny that adults and minors alike use websites like YouTube, Dreamwidth, Nextdoor, and Snapchat to engage in protected First Amendment activity. It

nevertheless tries to evade First Amendment scrutiny altogether by insisting that the Social Media Act regulates the “non-expressive conduct” of “contracting with a minor”—not speech. Opp.11-13. No court has accepted that argument. *See NetChoice v. Carr*, 789 F.Supp.3d 1200, 1221 (N.D. Ga. 2025); *NetChoice v. Griffin*, 2025 WL 978607, at *7-10 (W.D. Ark. Mar. 31, 2025); *NetChoice v. Yost*, 716 F.Supp.3d 539, 552-53 (S.D. Ohio 2024). This Court should not either.

At the outset, the state ignores that creating an account—a personalized profile containing information the user chooses to present to others—is itself speech. *See Carafano v. Metrosplash.com*, 339 F.3d 1119, 1124 (9th Cir. 2003). It also ignores that the Act does not restrict all contracting by minors, or even all contracting by minors online. It restricts only the creation of an account on services where people engage in protected speech. Courts have repeatedly held that the First Amendment may not be evaded by isolating some purportedly “non-speech” component of protected activity. *See Telescope Media Grp. v. Lucero*, 936 F.3d 740, 752, 756-57 (8th Cir. 2019). Nor can the government restrict “protected activity” by “proceed[ing] upstream” to “dam the source.” *Buehrle v. City of Key West*, 813 F.3d 973, 977 (11th Cir. 2015). A law that precludes publishing books does not become any more tolerable if it accomplishes that end by banning “purchasing or using ink.” *Sorrell v. IMS Health*, 564 U.S. 552, 571 (2011). So too with a law that precludes people from reading the Lincoln Journal Star by banning them from creating an account on journalstar.com. Just as with library cards, newspaper subscriptions, or any other conduct necessary to access speech, people create the accounts the Social Media Act targets to access places “where they can speak and listen.” *Packingham*, 582 U.S. at 104. Divorcing the act of creating an account from the intended objective of using the website is like trying to divorce the act of buying a book from the intended objective of reading it.

By Nebraska’s logic, California could have evaded First Amendment scrutiny in *Brown* by insisting that the law restricted only the commercial activity of “contracting with a minor” for the sale or rental of video games. Opp.14. In reality, the Supreme Court squarely rejected any “distinction” between “the sale or rental” of video games and “the creation or possession” of them, recognizing that such a distinction “would make permissible the prohibition of printing or selling books—though not the writing of them.” *Brown*, 564 U.S. at 792 n.1. When it comes to the First Amendment, “[w]hether government regulation applies to creating, distributing, or consuming speech makes no difference.” *Id.* By the same token, it makes no difference whether the state restricts engaging in speech or accomplishes the same end by restricting access to speech. The First Amendment applies just the same.

That is precisely why the Supreme Court has held that, when the government restricts access to “social media,” it “prevent[s] the user from engaging in the legitimate exercise of First Amendment rights.” *Packingham*, 582 U.S. at 108. The Court did so, moreover, while reversing a decision holding that a statute prohibiting sex offenders from “access[ing] certain carefully-defined Web sites” was “a regulation of conduct,” not speech. *State v. Packingham*, 368 N.C. 380, 386 (2015). Nebraska tries to distinguish *Packingham* on the ground that the Social Media Act restricts only creating accounts on “social media,” not “access[ing]” social media altogether. Opp.23. But it is black-letter law that “burden[s]” on protected speech trigger First Amendment scrutiny just as much as “bans.” *Sorrell*, 564 U.S. at 565-66; *see also Free Speech Coalition v. Paxton*, 606 U.S. 461, 483 (2025). And while Nebraska notes that users can still engage in *some* activity on *some* websites without an account, it does not dispute that many forms of interaction on “social media” can happen only with an account. After all, people do not just use “social media” to browse content anonymously. They use it to engage in *social* interaction that is possible only

with an account—e.g., commenting on a friend’s Instagram post or sending photos and videos to classmates on Snapchat.

The state tries to analogize the Act to laws that prohibit minors from purchasing alcohol and fireworks. Opp.27-28. But as courts have explained in rejecting similar analogies, *see NetChoice v. Murrill*, 812 F.Supp.3d 594, 650 n.22 (M.D. La. 2025); *NetChoice v. Griffin*, 2023 WL 5660155, at *16 (W.D. Ark. Aug. 31, 2023), such laws principally regulate non-speech activity, *see Indigo Room v. City of Fort Myers*, 710 F.3d 1294, 1300 (11th Cir. 2013); *Gary v. City of Warner Robins*, 311 F.3d 1334 (11th Cir. 2002). Because the government has reasons “unrelated to the suppression of free expression” to limit minors’ access to alcohol, *United States v. O’Brien*, 391 U.S. 367, 377 (1968), any impact on speech is incidental. Here, “[b]y contrast, the primary purpose of a social media platform is to engage in speech,” and the restrictions the Social Media Act imposes on that speech are anything but incidental. *Griffin*, 2023 WL 5660155, at *16. Restricting access to speech is the point of the law.

On top of that, the Social Media Act also burdens the First Amendment rights of *adults* to access covered websites. PI.Br.14-15. Nebraska insists that that burden does not trigger First Amendment scrutiny because “age verification does not create a material obstacle to becoming an account holder.” Opp.23. But that argument cannot be squared with the Supreme Court’s decision in *FSC*. The Texas law at issue there required “proof of age to access content that is obscene to minors.” 606 U.S. at 482. Because the statute “regulate[d] only speech that is obscene to minors,” the burden on the constitutional rights of adults was “only incidental to the statute’s regulation of activity that is not protected by the First Amendment.” *Id.* 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,” squarely rejecting Texas’

argument that “only rational-basis review applies.” *Id.* at 495. If restricting adults’ access to protected speech “only incidental[ly]” to restricting minors’ access to speech that is *unprotected* as to minors triggers heightened scrutiny, then restricting access to First Amendment activity that is protected for adults and minors alike triggers heightened scrutiny *a fortiori*.

TikTok v. Garland, 604 U.S. 56 (2025) (per curiam), does not suggest otherwise. The Court did not hold that the First Amendment did not apply there; it assumed that it did. *Id.* at 68-69. And the “unique” law at issue there is nothing like the Social Media Act. *Id.* As the Court described it, that law did not prohibit users from accessing or creating accounts on TikTok; it prohibited the distribution of a “foreign adversary controlled application.” *Id.* at 65-66. In other words, the Court concluded that the law principally regulated TikTok’s “corporate control.” *Id.* at 68. True, the law may have caused TikTok to shutter if it could not find a buyer, thereby preventing users from continuing to use it to engage in speech. But the Court determined that that was an incidental effect of the prohibition on foreign-adversary ownership, not a direct effort to restrict users’ access to speech.

B. The Social Media Act Triggers Strict Scrutiny.

The Social Media Act not only restricts an unprecedented amount of First Amendment activity; it does so based on content and speaker. PI.Br.16-18. Nebraska insists that the Act is content neutral because the challenged provisions “do not ban adults or minors from accessing any specific content online.” Opp.18. But that ignores the fact that whether a website is covered by the Act turns on the type of *content* on the website. PI.Br.16-18. A law that imposed access restrictions on bookstores that primarily sell self-help books, while exempting stores that primarily sell books about news or sports, would not be content neutral. So too here. The Act covers websites that “[e]nable[] an account holder to communicate with other account holders and users through posts,” but it exempts websites where users can engage in the same kind of interaction

with each other if they offer “[o]nline shopping” services, “primarily provide[] career development opportunities,” or predominantly limit user interaction to technical support or reviewing products. §27(11).

Nebraska maintains (without explanation) that the Act’s exemptions “do not automatically transform the challenged provisions into content-based restrictions” because laws that “exempt certain mediums” do not necessarily raise First Amendment concerns. Opp.21. According to Nebraska, the Act and its exemptions simply recognize “the special characteristics of social media companies.” Opp.21. But that begs the question what makes something a “social media company.” And under Nebraska’s law, a website that has all the features that otherwise would make it a “social media company” ceases to be one simply because of the content of the speech on that website: Websites that “contract with minors” are exempt if they “primarily provide[]” Nebraska’s preferred content. The Act thus does not “exempt certain mediums” or focus on “special characteristics” like the “unrestricted ability to contract with minors”; it draws distinctions “based on the content of [speech]” a minor would like to access. Opp.21. That is content-based discrimination through and through.

The Act is also content based because it defines “social media platform[s]” based on whether they permit users to “communicate with other account holders and users through posts,” while exempting websites that consist “primarily of content ... preselected by the service.” §27(11)(a). The state does not dispute that certain kinds of content and viewpoints—e.g., a peer’s posts about school, an influencer’s take on the news, other young people’s opinions on self-help and spirituality, and on and on—are far more likely to proliferate on the former than on the latter. Indeed, the kinds of services the state targets are popular in part because they amplify ideas and viewpoints that are often excluded from more mainstream sources of information. Nebraska tries

to justify that speaker-based distinction by reasoning that “social media” websites utilize (in Nebraska’s view) “addictive design features,” such as “[p]ush notifications, autoplay,” and “infinite scroll.” Opp.22, 32-33. But the Act regulates “social media platforms” regardless of whether they use those features. In point of fact, the Act covers Dreamwidth even though “Dreamwidth does not have a mobile application,” does not offer “infinite scroll,” and offers only “limited forms of content recommendation systems.” Paolucci.Decl.¶¶4-5. And it exempts a slew of websites (like Disney+ and ESPN) that *do* utilize those features. *See* Disney+, *Help Center*, <https://perma.cc/K54T-242G> (last visited June 11, 2026) (autoplay); ESPN, *Adjusting Fantasy Alert Preferences* (June 11, 2026), <https://perma.cc/2KPV-WM64> (push notifications). Such over- and under-inclusiveness “raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint.” *NIFLA v. Becerra*, 585 U.S. 755, 773-74 (2018).

C. The Age-Verification and Parental-Consent Requirements Cannot Survive Any Level of Heightened Scrutiny.

Nebraska makes no serious effort to justify the Social Media Act under strict scrutiny. And while it insists that the Act satisfies intermediate scrutiny, that argument fails multiple times over even assuming that is the right standard. To satisfy intermediate scrutiny, Nebraska must demonstrate that the Act is “narrowly tailored to serve a significant governmental interest.” *Packingham*, 582 U.S. at 105-06. Its interest must be “unrelated to the suppression of free speech.” *FSC*, 606 U.S. at 471. And its chosen solution may not “burden substantially more speech than necessary to further those interests.” *Id.* Even setting aside that the Social Media Act does not

include any legislative findings or statement of purpose explaining the reason behind its restrictions,¹ PI.Br.18-19, the Social Media Act flunks that standard.

Nebraska argues that the Act furthers the state’s “preference for parental consent and control over their child’s social media use.” Opp.23. That is a non-starter in the Eighth Circuit, which holds that “the government cannot silence protected speech by wrapping itself in the cloak of parental authority.” *Interactive Digit. Software Ass’n v. St. Louis Cnty.*, 329 F.3d 954, 960 (8th Cir. 2003). Contrary to Nebraska’s contention, “punishing third parties for conveying protected speech to children *just in case* their parents disapprove of that speech”—as the Social Media Act does—is not “a proper governmental means of aiding parental authority.” *Brown*, 564 U.S. at 802; *contra* Opp.18.

Nebraska pivots to insisting that the Social Media Act serves its interest in protecting children’s mental health. Opp.24. But while the government may take many steps to protect minors from harm (including alleged harms related to social media), restricting all minors from accessing mediums of protected expression based on concerns that those mediums may have negative effects on some minors is not an available option. PI.Br.16-17. To the extent Nebraska asserts an interest in preventing “addiction” to mediums for engaging in protected speech, that is “very much related to the suppression of free expression,” *Moody v. NetChoice*, 603 U.S. 707, 740 (2024)—as evidenced by the fact that the Act regulates services depending on whether they

¹ Nebraska includes cherry-picked snippets of floor debates in an effort to make up for that deficiency—while ignoring the many statements that lay bare the content-based motives behind the law, *e.g.*, Dkt.24-13 at 76 (“Social media companies are making millions, if not billions, on the backs of our computers and off of our children who are watching these, downloading these apps, watching social media for hours on end, and then passing on the propaganda that the social media giants want them to pass on.”). In any event, statements from a handful of legislators do not make up for legislative findings and statements of purpose enacted on the face of the law. *See TikTok*, 604 U.S. at 78.

facilitate user interaction, not whether they use purportedly “addictive design features,” Opp.33. The Supreme Court has rejected the notion that the “popular[ity]” of speech “can justify the government’s attempts to stifle it.” *Sorrell*, 564 U.S. at 577-78. Just as the state may not restrict access to Disney+ because some shows contain “catchy jingles,” *id.*, Nebraska cannot restrict access to “social media platform[s]” out of “fear that speech might persuade” or attract an individual’s attention. *Id.* at 576.

Even assuming that Nebraska has a valid interest, moreover, the Act does not advance that interest because the state has identified no causal link—or even correlation—between access to all the many websites covered by the Act and harm to minors. That failure to “show a direct causal link” between the two is fatal. *Brown*, 564 U.S. at 799; *see Broad. Sys. v. FCC*, 512 U.S. 622, 664 (1994) (under intermediate scrutiny, the government “must demonstrate that ... the regulation will in fact alleviate the[] harms in a direct and material way”). Even in a preliminary-injunction posture, “[t]he Government has the burden” to produce evidence justifying its law under strict or intermediate scrutiny. *Ashcroft v. ACLU*, 542 U.S. 656, 669 (2004). The state has not carried that burden here, as Nebraska’s experts have not established that “the full range of ‘thousands’ of websites covered by [the Social Media Act] cause harms to minors sufficient to suppress those minors’ access to protected speech.” *NetChoice v. Yost*, 778 F.Supp.3d 923, 955-56 (S.D. Ohio 2025) (rejecting similar expert evidence). The studies one of its experts cites, for instance, define social media to include only “social networking sites like Facebook.” Dkt.24-21 ¶20. They also define social media sites as those that “use personalized feeds,” something that not every website covered by the Social Media Act employs. *Id.* What is more, one of Nebraska’s two experts has admitted elsewhere that he has no data to support the state’s assertion that restrictions like the Social Media Act’s are necessary, Opp.27-28, instead confessing

that he just speculates about how often (if at all) minors circumvent parental controls. *Comput. & Commc'ns Indus. Ass'n v. Uthmeier*, No. 4:24-cv-00438 (N.D. Fla. Feb. 14, 2025), D.Ct.Dkt.63 at 211:1-219:10.²

It is thus not a question of whether the state's evidence shows causation or only correlation; it shows neither. Other courts have found similar expert testimony—including from one of the same experts—insufficient to carry a state's burden. See *NetChoice v. Murrill*, 812 F.Supp.3d 594, 651 (M.D. La. 2025) (finding “troubling” flaws with a report by Dr. Twenge and concluding that Louisiana had “not established a causal relationship between social media use and health harms to minors”); *Students Engaged in Advancing Tex. v. Paxton*, 765 F.Supp.3d 575, 599 (W.D. Tex. 2025) (regulations failed heightened scrutiny because the state only “gesture[d] toward mental health impacts of social media use”); *NetChoice v. Reyes*, 748 F.Supp.3d 1105, 1125 (D. Utah 2024) (similar). This Court should do the same.

Making matters worse, the Social Media Act is both seriously over- and under-inclusive vis-à-vis the state's professed interests. Although those arguments featured prominently in NetChoice's opening brief, PI.Br.21-24, Nebraska offers no response, insisting (*contra* reality) that its law is narrowly tailored because the age-verification and parental-consent provisions are the only way for parents to prevent a child from creating an account on a covered website, which apparently is when “[t]he harm arises.” Opp.33. If that is right, then one wonders why Nebraska felt the need to also compel websites to enable parents to surveil minor users' online activity *after* they create an account. Regardless, the state's response does not begin to explain why the Act restricts access to websites like Dreamwidth and College Confidential, which have no apparent

² Nebraska's other expert apparently uses those very tools when it comes to her own children's use of social media. See C. Pearson, *She Started the Debate About Kids and Phones. Now She Wants to End It.*, N.Y. Times (Sept. 6, 2025), <https://perma.cc/A5GD-CJMT>.

connection to the state’s asserted harms. Nor does it explain why the many tools NetChoice highlighted in its opening brief, PI.Br.5-7, are insufficient. *See Brown*, 564 U.S. at 803 (rejecting notion that state has compelling interest in “[f]illing the remaining modest gap in concerned parents’ control”). The state also never explains why the other, unchallenged provisions of the Act—which directly address the state’s primary concerns about the time minors spend online and their data privacy, §28(4)(c)-(d)—are not enough.³ Even under intermediate scrutiny, Nebraska must show that it “seriously undertook to address the problem with less intrusive tools readily available to it,” and that “alternative measures that burden substantially less speech would fail to achieve the government’s interest, not simply that the chosen route is easier.” *McCullen v. Coakley*, 573 U.S. 464, 490, 494-95 (2014). And under intermediate scrutiny, “a prophylaxis-upon-prophylaxis approach” is “a significant indicator that the regulation may not be necessary for the interest it seeks to protect.” *Cruz*, 596 U.S. at 306.

II. NetChoice Is Likely To Succeed On Its Claim That The Parental Surveillance Requirements (§28(4)(a) & (b)) Violate The First Amendment.

The Social Media Act’s parental-surveillance provisions, §28(4)(a)-(b), also trigger and fail strict scrutiny. By requiring covered websites to enable parents to “[v]iew all posts the minor account holder makes” and “all responses and messages sent to or by the minor account holder,” *id.*, Nebraska infringes on the rights of minors, who will now feel compelled to “cease or modify protected First Amendment” activity “the government disfavors.” *First Choice Women’s Res. Ctrs. v. Davenport*, 146 S.Ct. 1114, 1125 (2026). Not only does Nebraska barely explain why these provisions can survive any level of scrutiny, but the state’s opposition actively undermines any

³ The state emphasizes that NetChoice challenges §28(3)(b)’s requirement that companies “develop a method for a parent to revoke consent for a minor.” But NetChoice does so only because that provision is inextricably intertwined with the (unconstitutional) obligation to secure parental consent in the first place. *Id.* §28(3)(a).

defense it might have made. The state says time and again that its primary concern is with the harms that supposedly arise “when a minor becomes an account holder,” which is when the “addictive design features are triggered.” Opp.33. Putting aside that application of the Act turns on content and not “addictive design features,” the state all but admits that the parental-surveillance provisions are unnecessary “prophylaxis-upon-prophylaxis” because they have nothing to do with account creation or the addictive features the state is worried about. *Cruz*, 596 U.S. at 306.

Instead of addressing this, the state speculates that the parental-surveillance provisions may not chill speech because the provisions do not *require* parents to “monitor their children’s” online presence. Opp.30. But that undermines, not helps, the state’s position; if there are really “many cases where parents will not choose to monitor their child’s communications,” Opp.30-31, then it is hard to understand why Nebraska is compelling covered websites to provide those tools in the first place, or why the many parental controls and oversight tools NetChoice’s members (and others) already provide do not get the job done, Pl.Br.27-28. It also defies reality to think that a provision that requires covered websites to provide surveillance tools will not “restrict[] how [minors] may interact privately.” *First Choice*, 146 S.Ct. at 1129. The Court should reject the state’s invitation to check common sense at the door.

III. NetChoice Has Associational Standing.

With little to say on the merits, Nebraska tries to avoid them, arguing that, though NetChoice unquestionably has standing to sue on behalf of its members, it cannot assert the First Amendment rights of its members’ users. Opp.8-9. Every court that has considered that argument has rejected it. *See NetChoice v. Fitch*, 134 F.4th 799, 805-07 (5th Cir. 2025). Rightly so: Decades of precedent forecloses it.

Start with *Virginia v. American Booksellers Association*, 484 U.S. 383 (1988). There, organizations of booksellers and two bookstores brought a pre-enforcement First Amendment

challenge to a Virginia statute that made it unlawful for booksellers to knowingly display explicit material to minors. *Id.* at 387-88 & n.3. Virginia argued that the plaintiffs lacked standing to bring their First Amendment challenge because they asserted only the “rights of bookbuyers.” *Id.* at 392-93. The Supreme Court disagreed. While “the usual rule is that a party may assert only a violation of its own rights,” in “the First Amendment context ‘[l]itigants ... are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute’s very existence may cause others not before the court to refrain from constitutionally protected speech or expression.’” *Id.* The Court therefore had no problem with the booksellers who were regulated by the law “alleg[ing] an infringement of the First Amendment rights of bookbuyers.” *Id.* at 388 n.3, 393 & n.6. The Court reached that conclusion, moreover, even though it declined to decide whether the booksellers had First Amendment rights of their own to assert, which makes this an even easier case since Nebraska’s law inflicts First Amendment injury on NetChoice’s members too.⁴

American Booksellers hardly stands alone. The plaintiffs in *Brown* were organizations that represented the video game and software industries, not minors asserting a First Amendment right to purchase video games. 564 U.S. at 789-90. Although the Court did not specifically address standing, it allowed the association plaintiffs to assert the First Amendment rights of minors and repeatedly emphasized their rights in striking down California’s law. *Id.* at 795 n.3, 805; *see also*, e.g., *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 252-53 (2002).

Even outside the First Amendment context, the Court has repeatedly held that plaintiffs who have Article III standing in their own right may “litigate the rights of third parties when

⁴ The state suggests that there is no First Amendment right “to speak to minors,” Opp.2, but *Brown* begs to differ. *See* 564 U.S. at 795 n.3.

enforcement of the challenged restriction against the litigant would result indirectly in the violation of third parties' rights." *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004). In *Craig v. Boren*, for example, the Court held that a beer vendor could assert the equal-protection rights of her underage male customers in a challenge to the constitutionality of a law that prohibited the sale of 3.2% beer to men under 21 and women under 18. 429 U.S. 190, 195 (1976). The Court explained that the vendor was "entitled to assert those concomitant rights of third parties that would be 'diluted or adversely affected' should her constitutional challenge fail and the statutes remain in force." *Id.* at 195. The same reasoning applies here. The Act directly regulates NetChoice's members, and restricts their First Amendment rights in the process, so their own standing to assert a First Amendment claim is undisputed. And the "threatened imposition of governmental sanctions" will require them to restrict users' access to their services, thereby "result[ing] indirectly in the violation of third parties' rights." *Id.* NetChoice members may therefore "act[] as advocates of the rights of third parties who seek access to their market or function." *Id.*

Nebraska's arguments to the contrary are unconvincing. The state concedes that "the First Amendment context" here "justif[ies] a lessening of prudential limitations on standing." Opp.9. And the primary case on which it relies (other than a one-Justice concurrence) held that the plaintiff *had* standing to assert the First Amendment rights of its clients. *See Sec'y of State v. Joseph H. Munson Co.*, 467 U.S. 947 (1984). Nebraska argues that the harms to users are "speculative" because the Social Media Act does not "prevent[] a person from engaging in constitutionally protected speech." Opp.9. But that beggars belief. As Nebraska itself later admits, "access to the platform occurs" when "an account is created." Opp.33. In other words, individuals who wish to fully engage in (and with) the speech on members' platforms must, by the state's own lights, create an account to do so. And there is no dispute that Nebraska's law targets that very act. It is thus

anything but “speculative” that Act will burden the rights of minors (who must obtain parental consent to create an account and are subject to website-empowered parental surveillance while online) and adults (who must undergo age verification to create an account). *See* pp.3-8, 12-13, *supra*. Indeed, restricting minors’ access to covered websites is the whole point.

Last, invoking a case where the plaintiffs did not have standing at all, Nebraska briefly suggests that NetChoice’s members lack a “direct relationship” with its users. Opp.9. But it never explains why they need one, since they undisputedly have standing in their own right. Nor does it explain how members’ relationship with their users is any different than a bookseller’s relationship with its customers, or a beer vendor’s relationship with its customers. To the extent that Nebraska is suggesting that some users may disagree with NetChoice about the wisdom or constitutionality of laws like the Social Media Act, the same could be said whenever a vendor defends its customers’ rights. Some customers in *Craig* may well have approved of Oklahoma’s differing age restrictions on the sale of alcohol, but that did not prevent the vendor from asserting the interests of customers who wanted to purchase beer but could not.

IV. The Other Preliminary Injunction Factors Overwhelmingly Support Maintaining The Status Quo.

The other preliminary injunction factors favor relief. Nebraska does not dispute that the “loss of First Amendment freedoms” “constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The state instead faults NetChoice for not filing its lawsuit earlier. Opp.34-35. But “[t]he law does not demand that a plaintiff move for [a] preliminary injunction the moment a challenged statute is enacted.” *Wood v. Fla. Dep’t of Educ.*, 729 F.Supp.3d 1255, 1287 (N.D. Fla. 2024). Plaintiffs “are allowed some time to consider their options, prepare their lawsuit, and prepare their motion.” *Id.* at 1288. And NetChoice filed this lawsuit on May 14—a month and a half before Nebraska could bring an enforcement action against any of its members—and moved

for a preliminary injunction just a few days later. Courts routinely grant preliminary injunctions on similar timelines. *See, e.g., CCIA v. Paxton*, 747 F.Supp.3d 1011, 1043 (W.D. Tex. 2024); *cf. Ng v. Bd. of Regents of Univ. of Minn.*, 64 F.4th 992, 998 (8th Cir. 2023) (noting that “[d]elays of seven months” and “delays of eight months” “have been held to be reasonable”).

The state’s cases do not aid its cause. In *Benisek v. Lamone*, 585 U.S. 155 (2018) (*per curiam*), a plaintiff challenging a districting map brought its claims six years after the state legislature drew the map. *Id.* at 158. Here, by contrast, NetChoice filed its suit before the Social Media Act took effect. *Novus Franchising v. Dawson*, 725 F.3d 885 (8th Cir. 2013), is similarly inapposite, as the plaintiff there did not file its lawsuit until 17 months after its claim accrued. *Id.* at 894.

Nebraska also argues that NetChoice has “failed to show it lacks an adequate remedy at law” because the costs of complying with the Act are “insignificant.” Opp.35-36. Even if those costs were as small as the state makes them out to be—something directly contradicted by the record, e.g., Paolucci.Decl.¶¶28-30—that would not change the fact that NetChoice’s members could not recoup them at the conclusion of this lawsuit, which is what matters in the irreparability analysis. *Accord Gen. Motors Corp. v. Harry Brown’s*, 563 F.3d 312, 319 (8th Cir. 2009) (“Irreparable harm occurs when a party has no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages.”).

Finally, Nebraska insists that the equities and the public interest cut in its favor because of its general interest in protecting children. But the state has no interest in enforcing an unconstitutional law, and its arguments are considerably undermined by the fact that the law leaves minors free to access all the same content and features on exempted services. Particularly given the many tools already available to parents who wish to restrict their children’s access to online

services, including the provisions of the Social Media Act that NetChoice does not challenge, it is hard to see how maintaining the status quo could cause any material harm.

CONCLUSION

The Court should grant the injunction.

NETCHOICE, Plaintiff

By: s/Erin E. Murphy
Erin E. Murphy* (D.C. #995953)
James Y. Xi* (D.C. #1617537)
Camilo Garcia* (D.C. #90004901)
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
erin.murphy@clementmurphy.com
james.xi@clementmurphy.com
camilo.garcia@clementmurphy.com
* *Admitted pro hac vice*

and

Nathan D. Clark (#25857)
CLINE WILLIAMS WRIGHT
JOHNSON & OLDFATHER, L.L.P.
1900 U.S. Bank Building
233 South 13th Street
Lincoln, NE 38508
(404) 474-6900
nclark@clinewilliams.com

Certificate of Service

I certify that on June 12, 2026, I served the foregoing on counsel for the plaintiff by e-mail and by U.S. First Class mail, postage prepaid at:

Michael Hilgers
Office of the Nebraska Attorney General
c/o Zachary Pohlman, Assistant Solicitor General
1445 K Street

Lincoln, Nebraska 68508
Zachary.Pohlman@nebraska.gov

s/Erin E. Murphy

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The undersigned certifies that the word count of this brief complies with local rule NECivR 7.1(d). The Word-count function of Microsoft Word states that this brief, inclusive of all text, contains 6,464 words. The undersigned further certifies that generative artificial intelligence was not used to prepare this brief.

s/Erin E. Murphy