

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

NETCHOICE,

Plaintiff,

v.

JONATHAN SKRMETTI, in his official
capacity as the Tennessee Attorney General &
Reporter,

Defendant.

Civil Action No. 3:24-cv-01191

**PLAINTIFF NETCHOICE'S SUPPLEMENTAL BRIEF
IN RESPONSE TO COURT'S ORDER (ECF 108)**

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This Court directed the parties to “address any matters . . . that the parties discern is relevant to the Court’s further consideration . . . of the Preliminary Injunction Motion” and Defendant’s “motion to dismiss.” ECF 108, 110. This Court should preliminarily enjoin Defendant’s enforcement of the Act against NetChoice’s members and deny Defendant’s motion to dismiss.

Background

NetChoice moved for a preliminary injunction against enforcement of Tennessee House Bill 1891 (the “Act”) as to specified NetChoice members on October 3, 2024—requesting relief before the Act’s January 1, 2025, effective date. ECF 8. NetChoice argued the Act’s speech restrictions—including age verification and parental consent to access social media websites—violate the First Amendment and due process. *Id.* at 1. After the case was reassigned, NetChoice moved for a temporary restraining order on January 16, 2025. ECF 48-49.¹

This Court denied NetChoice’s motion on June 18, 2025, concluding that NetChoice failed to demonstrate irreparable harm. ECF 78-79. NetChoice appealed, and the Sixth Circuit vacated and remanded. ECF 107. The panel majority concluded that “[t]he kinds of harm asserted by NetChoice”—First Amendment harms and unrecoverable compliance costs—“meet our threshold requirement of irreparability.” *Id.* at 4. The Sixth Circuit remanded “for further consideration of [NetChoice’s preliminary-injunction] motion consistent with this decision.” *Id.* at 5.

While NetChoice appealed this Court’s order, Defendant moved to dismiss portions of NetChoice’s First Amended Complaint on two narrow grounds: (1) “to the extent that NetChoice brings as-applied claims” on behalf of its covered members; and (2) “NetChoice’s vagueness challenges.” ECF 91 at 4. That motion is pending.

¹ In this brief, NetChoice cites to its January 16, 2025, motion and January 24, 2025, reply brief. ECF 49, 55. Because Defendant largely rested his opposition to that January 16 motion on Defendant’s November 1, 2024, opposition to NetChoice’s original motion (ECF 26), this brief cites to Defendant’s November 1 brief.

I. Other district courts have added to the consensus that laws requiring age verification and parental consent to access social media websites violate the First Amendment.

Multiple courts considering challenges to similar laws have concluded that such laws are (likely) unconstitutional.² Each of these cases supports NetChoice’s claims here, with many of them further supporting NetChoice’s other arguments, such as NetChoice’s standing to raise as-applied challenges on behalf of its members and the proper facial First Amendment analysis.

Louisiana. The Middle District of Louisiana concluded at summary judgment that Louisiana’s similar age-verification, parental-consent, and advertising requirements were unconstitutional as applied to identified NetChoice members. *NetChoice v. Murrill*, 812 F. Supp. 3d 594, 648-55, 664 (M.D. La. 2025). Especially relevant to Defendant’s motion to dismiss, *Murrill* held that NetChoice can assert as-applied claims on behalf of its regulated members when challenging laws that “impose[] broad restrictions on threshold access to regulated websites.” *Id.* at 630 (citation omitted). That is precisely the case here, as NetChoice has explained. ECF 95 at 11-29.

Georgia. The Northern District of Georgia enjoined enforcement of a law requiring age verification and parental consent to access a similar range of social media services. *NetChoice v. Carr*, 789 F. Supp. 3d 1200, 1209-10 (N.D. Ga. 2025). In that case, the court concluded that restrictions on access to social media services are readily amenable to facial challenge because “the law’s constitutionality hinges on the same analysis in each application.” *Id.* at 1218.

Nebraska. The District of Nebraska preliminarily enjoined enforcement of a law similar to Tennessee’s Act here. *NetChoice v. Hilgers*, 2026 WL 1850018, at *12 (D. Neb. June 27, 2026). As part of that analysis, the court engaged in a facial-challenge analysis that demonstrates how this Court should approach a similar facial challenge:

[T]he relevant activity directly regulated is a minor’s account creation on a social media platform. . . . [This] regulation inhibits a minor’s ability to engage in

² All of the cases discussed in this Part are currently on appeal.

protected First Amendment activity or see material protected by the First Amendment. . . . The actors directly regulated are social media companies, minors, and parents of minors, with an incidental burden on adults who must verify their age before making an account. That characterizes the scope . . . as relevant to NetChoice’s facial challenge. *Some* form of First Amendment scrutiny is warranted.

Id. at *6.

Virginia. The Eastern District of Virginia preliminarily enjoined enforcement of a law requiring parental consent for minors younger than 16 to access social media websites for longer than one hour per day. *NetChoice v. Jones*, 822 F. Supp. 3d 656, 663-64 (E.D. Va. 2026).

Florida. In a related context, the Northern District of Florida held that NetChoice has associational standing to raise as-applied First Amendment challenges on behalf of its members. *NetChoice, LLC v. Uthmeier*, 2025 WL 3534514, at *5-10 (N.D. Fla. May 22, 2025).

II. On balance, the Sixth Circuit’s fractured decision in *Yost* supports NetChoice’s central arguments.

The Sixth Circuit’s fractured decision in *NetChoice, LLC v. Yost* has little that is binding on this Court—but the panel members agreed on multiple questions that provide persuasive support to NetChoice here. 180 F.4th 268 (6th Cir. 2026). Judge Clay wrote the lead opinion reversing the district court’s grant of summary judgment to NetChoice. *Id.* at 297. Judge Batchelder concurred only in the judgment. *Id.* Judge Ritz dissented. *Id.* at 316.³

In the face of those three opinions, only *Yost*’s “holding” is binding on this Court. *Wright v. Spaulding*, 939 F.3d 695, 700 (6th Cir. 2019). Here, the only thing that *Yost* held is that NetChoice failed to demonstrate (1) *ultimate* success at summary judgment on (as compared to mere likelihood of success on the merits, at issue here) (2) its *facial* First Amendment challenge (as compared to the facial and as-applied challenges at issue here) and (3) its facial vagueness

³ The Sixth Circuit stayed the issuance of the appellate mandate in *Yost*, pending disposition of NetChoice’s forthcoming petition for certiorari.

challenge to (4) a distinct Ohio law requiring only parental consent for minors younger than 16 to access a different range of websites. *See* 180 F.4th at 275 (“[A] majority of the panel agrees that NetChoice has failed to establish that the Act is facially unconstitutional.”). Accordingly, much of what the panel members said only stands for its persuasive value. Nevertheless, those statements support NetChoice’s arguments here.

A. The panel unanimously agreed that Ohio’s parental-consent requirement implicated the First Amendment—refuting Defendant’s lead argument here.

All three panel members agreed that requiring minors to obtain parental consent before creating accounts on “social media” triggers First Amendment scrutiny. *Id.* at 286-87 (Clay, J.); *id.* at 311 (Batchelder, J.); *id.* at 319-20 (Ritz, J.). *Yost* therefore refutes one of Defendant’s central arguments during preliminary injunction briefing that, “[b]y *barring certain contracts* and requiring ‘informed consent,’ the Act regulates *conduct*, not speech.” ECF 26 at 21 (emphases added; citation omitted). So there can be little question that the Act implicates the First Amendment, as every other court to consider the issue on the merits in similar cases has concluded.

B. Two panel members concluded that Ohio’s content-based coverage definition rendered Ohio’s operative speech restrictions content-based regulations of speech that must satisfy strict scrutiny.

Judges Clay and Ritz concluded that Ohio’s law was a content-based regulation of speech triggering strict First Amendment scrutiny because the law defined covered websites with reference to content. *Yost*, 180 F.4th at 288 (Clay, J.); *id.* at 320 (Ritz, J.). Here too, NetChoice has argued that Tennessee’s law discriminates based on content. ECF 49 at 20-21. If anything, Tennessee’s Act is more obviously content-based because it excludes websites to the extent their users are “post[ing]” about specific content, such as “interactive gaming,” “educational entertainment,” and “career development opportunities.” § 47-18-5702(2)(B), (9)(B). Defendant, however, has steadfastly resisted that straightforward conclusion. ECF 26 at 25-26.

C. Other parts of *Yost* provide this Court with little guidance.

1. Judges Clay’s and Batchelder’s differing prudential-standing analyses are distinguishable and not binding here.

Although both Judges Clay and Batchelder agreed that NetChoice lacks standing to raise minor users’ rights, that conclusion is not binding on this Court for multiple reasons.

First, this case raises different issues and is therefore distinguishable. *Yost* concerned the rights of minors younger than 16, with no clear implications for adults because Ohio disclaimed any age-verification obligations. This case, by contrast, squarely involves the rights of (1) *all* teen-aged users, who are subject to the Act’s parental-consent requirements and account limitations; and (2) *all* adults, who are subject to the Act’s age-verification requirements. These distinctions among the cases raise different issues, especially because Judges Clay and Batchelder did not agree about the proper standard to apply. *See Yost*, 180 F.4th at 284-85 (Clay, J.) (noting methodological disagreement); *id.* at 309 (Batchelder, J.) (same).

Second, the panel misunderstood why users’ interests were relevant to NetChoice’s challenge. NetChoice is *not* invoking users’ rights to bring claims on their behalf. Rather, users’ rights are a necessary component of the First Amendment tailoring inquiry into whether the Act “burden[s] substantially more speech than necessary.” *McCullen v. Coakley*, 573 U.S. 464, 490 (2014). And, of the majority, only Judge Clay engaged in any tailoring analysis. *See infra* pp.7-8.

To make that inquiry here, the Court *must* address the Act’s effects on people’s access to fully protected speech, even if that requires “looking beyond the plaintiff’s particular conduct”—especially given Tennessee’s asserted interest in safeguarding minors’ well-being. *Hodge v. Talkin*, 799 F.3d 1145, 1157 (D.C. Cir. 2015); *see* ECF 26 at 21. When the government’s asserted interest raises the rights and interests of third parties, the Court must consider those interests in its analysis. Otherwise, the tailoring analysis would omit half of the necessary considerations. That is

because the First Amendment affords “protection” to “*the communication*, to its source and to its recipients both.” *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 756 (1976) (emphasis added).

Third, it is not “clear” the extent to which Judges Clay and Batchelder “intended to rest the judgment . . . on [their] conclusion about” users’ rights. *Wright*, 939 F.3d at 701.

2. Judges Clay’s and Batchelder’s vagueness conclusions are distinguishable.

Both Judges Clay and Batchelder concluded that Ohio’s distinct coverage provisions are not unconstitutionally vague. *Yost*, 180 F.4th at 293-97 (Clay, J.); *id.* at 312-15 (Batchelder, J.). As above, those judges disagreed about *why* Ohio’s law was not facially vague. Furthermore, this case concerns wholly distinct coverage provisions, for which a different analysis obtains. Specifically, *Yost* concerned whether Ohio’s multi-factor coverage test and exception for “established and widely recognized media outlet[s]” were facially vague. *Id.* at 294 (Clay, J.). Here, however, NetChoice’s distinct arguments must be evaluated on their own terms, as they address Tennessee’s distinct coverage provisions. *See* ECF 49 at 28-29; ECF 55 at 5.

3. The panel members’ solo decisions provide no binding guidance to this Court.

The remaining aspects of Judges Clay’s and Batchelder’s decisions are wrong on the merits and distinguishable—both because Tennessee’s Act differs from Ohio’s and because this case is at the preliminary injunction stage, before the parties have conducted any discovery.

Judge Batchelder’s facial-challenge analysis. Judge Batchelder alone concluded that NetChoice failed “to identify the full scope of that speech and then assess how much of that burden is unjustified.” *Yost*, 180 F.4th at 311. That conclusion partially rested on her erroneous conclusion that she could not consider the Act’s effects on users. *See supra* p.5.

As an initial matter, NetChoice *has* “challenge[d] The Act as applied to its members” here,

which Judge Batchelder suggested would raise different issues. *Yost*, 180 F.4th at 310; *see* ECF 88 ¶¶ 75-76. There are two important implications. First, NetChoice’s as-applied claims obviate the need for this Court to engage in whatever facial-challenge analysis Judge Batchelder thought might be necessary. Second, Judge Batchelder contemplated that NetChoice *can* raise as-applied challenges—contrary to Defendant’s motion to dismiss. *Contra* ECF 91 at 7-13.

Regardless, the preliminary-injunction record here addresses the problems that Judge Batchelder identified in *Yost*. For example, NetChoice has provided evidence that “the Act excludes services for which *Moody* questioned whether a different First Amendment analysis might apply.” ECF 49 at 11; *compare id.* at 11-12, *with Yost*, 180 F.4th at 311-12.

Judge Clay’s strict scrutiny analysis. Judge Clay erroneously concluded that Ohio’s law satisfied strict scrutiny. *Yost*, 180 F.4th at 289-93. No other panel member joined that reasoning. Strict scrutiny requires the *State* to show that it 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 notion that restricting minors’ access to vast amounts of speech on websites as diverse as NetChoice member websites ranging from Dreamwidth to Nextdoor is the least restrictive means of protecting children does not pass the straight-face test. Yet Judge Clay thought precisely that. *Yost*, 180 F.4th at 291. He did so even though the State took no discovery and provided only a handful of equivocal studies. *Id.* at 280. And his rationale repeatedly violated the Supreme Court’s instruction that “the overbreadth in achieving one goal is not cured by the underbreadth in achieving the other.” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 805 (2011); *e.g.*, *Yost*, 180 F.4th at 292. Furthermore, Judge Clay acknowledged that the State bears the burden under *Brown* to show a “causal link between social media use and Yost’s alleged harms”—which the State failed to produce. *Yost*, 180 F.4th at 289; *see Brown*, 564 U.S. at 799 (requiring “a direct

causal link”); *see also Yost*, 180 F.4th at 300 (Batchelder, J.) (noting lack of causal evidence).

Regardless, Tennessee’s Act raises different tailoring concerns. For one, Tennessee explicitly requires age verification—which imposes a broader burden on covered websites and *all* of their users, both minors and adults. ECF 49 at 28. For another, Tennessee’s Act targets *all* minors, even though laws must “take into account juveniles’ differing ages and levels of maturity.” *Virginia v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 396 (1988); *see* ECF 49 at 27.

III. Other out-of-Circuit cases ruling against NetChoice are erroneous and distinguishable.

Decisions from other courts have overwhelmingly, though not universally, supported NetChoice’s arguments. *See* Part I. The other cases that Defendant may cite in support of his arguments are both erroneous and distinguishable.

1. The Fifth Circuit’s interim stay-stage decision in *SEAT v. Paxton*, 177 F.4th 665 (5th Cir. 2026), does not apply. The panel concluded that a law requiring age verification and parental consent for *app-store purchases* regulated “[a]t most” commercial speech. *Id.* at 669. Tennessee has never argued the Act regulates “commercial speech,” which is speech that “does no more than propose a commercial transaction.” *United States v. United Foods, Inc.*, 533 U.S. 405, 409 (2001).

Regardless, the Fifth Circuit’s logic does not carry over to this Act. Here, Tennessee restricts minors and adults from creating accounts on websites where they access and engage in non-commercial speech. Laws requiring age verification or restricting minors from subscribing to the New York Times would not be regulations of “commercial speech.” Otherwise, *Brown* should have come out the other way, because banning minors from purchasing violent video games regulates the “commercial transaction” of purchasing games.

Even if commercial-speech doctrine had some role to play here (although the Sixth Circuit notably did not seem to think it did in resolving *Yost*), strict scrutiny would still apply because the

Act includes a slew of obvious content-based distinctions. *See supra* pp.4-5. At any rate, *SEAT*'s application of intermediate scrutiny is flawed, as the court ignored that the government may not "burden substantially more speech than necessary to achieve [its] asserted interests." *McCullen*, 573 U.S. at 490. Defendant cannot satisfy that test, as the Act here restricts minors' and adults' access to all manner of protected First Amendment activity that has no conceivable connection to the harms Tennessee claims. ECF 49 at 23-28; ECF 55 at 5-6.

2. The Eleventh Circuit's divided, interim stay-posture decision in *Computer & Communications Industry Ass'n v. Uthmeier*, 2025 WL 3458571 (11th Cir. Nov. 25, 2025), supports many of NetChoice's arguments here. At the outset, the Eleventh Circuit held that NetChoice has standing to challenge the Florida law in that case. *Id.* at *3. Then, the Eleventh Circuit concluded that the challenged Florida law "implicate[d] the First Amendment" and "burden[ed] the speech of both minors and adults" on social media websites by imposing similar age-verification and parental-consent requirements as Tennessee's Act here. *Id.* at *3 & n.4.

Because Florida's law is different from Tennessee's law here, *Uthmeier*'s application of intermediate scrutiny is inapposite. For one, the Tennessee Act's coverage provision is plainly content-based, and the *Uthmeier* decision distinguished its analysis from other courts analyzing laws with coverage provisions similar to Tennessee's. 2025 WL 3458571, at *9 n.12; *see supra* pp.4-5. Even assuming *arguendo* that intermediate scrutiny applied here, Tennessee's indiscriminate regulation of nearly all "social media" as to all minors is much broader than the Florida law that the *Uthmeier* majority concluded was "limited in scope" and did "not apply at all to older minors." 2025 WL 3458571, at *6, *9 n.12.

3. *NetChoice, LLC v. Bonta*, 170 F.4th 744 (9th Cir. 2026), affirmed a preliminary injunction against several provisions of California's Age-Appropriate Design Code Act.

For the provisions where *Bonta* reversed the underlying preliminary injunction, *Bonta*’s facial-challenge analysis does not apply here. *See id.* at 754-63. Indeed, *Bonta* distinguished the facial-challenge analysis in other cases challenging laws “targeting social media companies.” *Id.* at 758-59 & nn.6-7 (collecting cases). That is this case: Tennessee’s Act confines its scope to what *Bonta* called “social media companies [and] publishers.” *Id.* at 759-60.

Bonta also distinguished between “age verification” requirements—which burden access to speech—and California’s age *estimation* requirement, which may not have the same effect, “especially where [it] is not required as a precondition to access content.” *Id.* at 762. The Ninth Circuit posited that companies could potentially avoid *all* age-related requirements by choosing instead to impose tighter privacy settings. Here, Tennessee’s Act requires websites to engage in age *verification*, § 47-18-5703(a)(1), and, for all minors, it requires parental consent too, § 47-18-5703(a)(2). So the Act indisputably “prevents access to content.” *Bonta*, 170 F.4th at 761.

4. *NetChoice, LLC v. Bonta*, 152 F.4th 1002 (9th Cir. 2025), helps NetChoice more than Defendant. For one, it held that NetChoice had associational standing to raise as-applied claims on its members’ behalf in various circumstances—even crediting one of those claims on the merits. *Id.* at 1016-17. The Ninth Circuit held that NetChoice lacked standing only to raise as-applied challenges to a provision of a California law that directly regulated personalized feeds and where the coverage definition regulated only websites with “personalized feeds.” *Id.* at 1010-13. Tennessee’s Act, by contrast, does not purport to regulate personalized feeds, nor is it limited to websites with such feeds. Instead, Tennessee has imposed broad restrictions on threshold access to protected speech.

Conclusion

This Court should preliminarily enjoin Defendant’s enforcement of the Act against NetChoice’s members and deny Defendant’s motion to dismiss.

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