

No. 25-1889

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

NETCHOICE, LLC,

PLAINTIFF - APPELLEE,

v.

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

DEFENDANT-APPELLANT.

On Appeal from the United States District Court
for the Western District of Arkansas
No. 5:23-cv-05105
The Honorable Timothy L. Brooks

**BRIEF OF AMICUS CURIAE AMERICAN CIVIL LIBERTIES UNION,
ARKANSAS CIVIL LIBERTIES UNION FOUNDATION,
ELECTRONIC FRONTIER FOUNDATION, ... IN SUPPORT OF
PLAINTIFF-APPELLEE AND AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, amicus states that they do not have a parent corporation and that no publicly held corporation owns 10% or more of their stock.

Dated: January 28, 2025

By: /s/ Aaron Mackey
Aaron Mackey

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STATEMENT OF INTEREST OF **AMICUS**¹

The American Civil Liberties Union (“ACLU”) is a nationwide, nonpartisan, nonprofit organization. The Arkansas Civil Liberties Union Foundation (“ACLU of Arkansas”) is a state affiliate of the ACLU. Both organizations are dedicated to the principles of liberty and equality embodied in the Constitution and our nation’s civil rights laws, including freedom of speech. They frequently advocate for First Amendment rights online, *see, e.g., Reno v. ACLU*, 521 U.S. 844 (1997) (counsel); *Packingham v. North Carolina*, 582 U.S. 98 (2017) (amicus), *Free Speech Coal., Inc. v. Paxton*, 145 S. Ct. 2291 (2025) (counsel), and the free speech rights of young people, *see, e.g., Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180 (2021) (counsel); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) (counsel).

The Electronic Frontier Foundation (“EFF”) is a non-profit civil liberties organization with more than **33,000** active members that has worked for 35 years to ensure that technology supports freedom, justice, and innovation for all people of the world. EFF is dedicated to protecting online users’ free expression and privacy rights and has fought for both in courts and legislatures across the country.

¹ Pursuant to Federal Rule of Appellate Procedure Rule 29(a)(4)(E), amicus certify that no person or entity, other than amicus curiae, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part. **The parties have consented to the filing of this brief.**

EFF has challenged laws that burden internet users' rights by requiring online services to verify users' ages. *See, e.g., ACLU v. Reno*, 929 F. Supp. 824, 825–27 (E.D. Pa. 1996) (serving as a plaintiff challenging the Communications Decency Act); *ACLU v. Reno*, 31 F. Supp. 2d 473, 480 n.3 (E.D. Pa. 1999) (serving as a plaintiff challenging the Child Online Protection Act).

...

INTRODUCTION

People rely on social media to keep up to date on the news, engage with elected officials and religious leaders, connect with friends, create art, and build movements. Social media allows minors and adults to discover new perspectives, discuss social and political issues, and develop a better understanding of others' beliefs and opinions. In the words of the Supreme Court, it holds “vast democratic forums” with the “potential to alter how we think, express ourselves, and define who we want to be.” *Packingham v. North Carolina*, 582 U.S. 98, 105–06 (2017).

By requiring every social media user to verify their age, and requiring any social media user under the age of 16 to prove that their parents consent to them accessing and engaging in protected speech online, Arkansas Act 689 (“the Act”) violates the First Amendment rights of minors and adults. The Act will block minors and adults from accessing protected speech online—all minors under 16 who cannot obtain parental consent or are unable to provide sufficient proof of it;

and all minors between 16-18 and adults who cannot verify their age or are unwilling to do so. It will also erase people’s ability to speak anonymously online and increase the risks of privacy invasions and data breaches.

Because the Act applies to speech that is protected for both adults and minors, *Free Speech Coalition, Inc. v. Paxton*, 145 S. Ct. 2291 (2025), does not control. Central to the Supreme Court’s analysis in that case was its assessment that the law at issue targeted sexual material that is “harmful to minors,” a category of speech that minors have no First Amendment right to view. Because minors suffer no such limitation when it comes to any other speech, including the plethora of political, religious, artistic, and educational content available on social media, *Paxton* is inapposite.

While Arkansas has a legitimate interest in protecting minors from harm, “that does not include a free-floating power to restrict the ideas to which children may be exposed.” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 794 (2011). In part for this reason, courts, including the district court below, have struck down similar social media restrictions around the country.² This Court should affirm.

² See *NetChoice, LLC v. Griffin*, No. 23-5105, 2025 WL 978607 (W.D. Ark. Mar. 31, 2025), *appeal docketed*, No. 25-1889 (8th Cir. May 2, 2025); *NetChoice, LLC v. Carr*, 789 F.Supp.3d 1200 (N.D. Ga. 2025); *NetChoice, LLC v. Yost*, 778 F. Supp. 3d 923 (S.D. Ohio 2025), *appeal docketed*, No. 25-3371 (6th Cir. May 13, 2025); *NetChoice, LLC v. Bonta*, 770 F. Supp. 3d 1164 (N.D. Cal. 2025), *appeal docketed*, No. 25-2366 (9th Cir. Apr. 11, 2025); *NetChoice, LLC v. Reyes*, 748 F.

ARGUMENT

I. THE ACT REGULATES PROTECTED SPEECH.

A. Minors and Adults Rely on Social Media to Engage in a Diverse Range of Protected Expression.

The internet, and social media in particular, plays a dominant role in the exercise of First Amendment rights today. The “[f]reedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that . . . it must be fully preserved,” *Martin v. City of Struthers*, 319 U.S. 141, 146–47 (1943), and, right now, social media platforms are “perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard,” *Packingham*, 582 U.S. at 107. In addition, social media offers people a space to exercise their right to receive information—to listen to and learn from others. *See, e.g., Martin*, 319 U.S. at 143 (right to receive literature); *Lamont v. Postmaster Gen. of U.S.*, 381 U.S. 301, 307–08 (1965) (right to receive mail); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 390 (1969). Social media creates “places where [people] can speak and listen, and then, after reflection, speak and listen once more.” *Packingham*, 582 U.S. at 104; *see also Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 190 (2021) (minors have a right to engage in and receive unpopular, off-campus speech).

Supp. 3d 1105 (D. Utah 2024), *appeal docketed sub nom., NetChoice, LLC v. Brown*, No. 24-4100 (10th Cir. Oct. 11, 2024).

As this section details, valuable, positive expression and connection regularly take place on social media. At the same time, people can share distressing or upsetting information or engage in negative interactions. That problem is not unique to social media and, just as the government cannot ban minors from reading newspapers (which contain distressing news) or showing up at town hall meetings (which might have heated public debate), the government cannot ban minors from accessing protected expression online simply because of its communicative impact.

An estimated 5.24 billion people use social media for everything from expressing themselves politically and engaging with elected representatives to learning new dances and finding community.³

Users routinely flock to online forums to get their news. For instance, 80% of Black young people, 69% of Latino young people, and 65% of white young people rely on social media to stay informed.⁴ And 54% of American adults “at least sometimes” get their news from social media.⁵

Social media is also central to organizing and participating in political

³ *Number of Internet and Social Media Users Worldwide as of February 2025*, Statista, <https://perma.cc/WHU7-9REA>.

⁴ Mary Madden et al., Common Sense & Hopelab, *A Double-Edged Sword: How Diverse Communities of Young People Think About the Multifaceted Relationship Between Social Media and Mental Health* 17 (2024), <https://perma.cc/4FXU-664F>.

⁵ Christopher St. Aubin & Jacob Liedke, *News Platform Fact Sheet*, Pew Rsch. Ctr. (Sep. 17, 2024), <https://perma.cc/Y8FW-FLVA>.

activities, from the Tea Party movement⁶ to the #MeToo movement.⁷ Nearly half of American social media users say they have been politically active on social media, whether by participating in a political group, encouraging others to act, looking up information about rallies or protests, or using hashtags to show support for a cause.⁸

Social media is also a forum for artistic creation. In one study, 71% of teens reported that social media is “a place where they can show their creative side.”⁹ “In any given day, about one in 10 tweens and teens will use their digital devices to create some type of art or music.”¹⁰ In addition, minors and young adults report that the internet helps them learn about art and music history.¹¹

⁶ Douglas A. Blackmon et al., *Birth of a Movement*, Wall St. J. (Oct. 29, 2010), <https://perma.cc/DX44-R46A>.

⁷ Ramona Alaggia & Susan Wang, “*I Never Told Anyone Until the #MeToo Movement*”: *What Can We Learn from Sexual Abuse and Sexual Assault Disclosures Made Through Social Media?*, 103 *Child Abuse & Neglect* 1, 4 (May 2020), <https://perma.cc/V2KA-JFF2>.

⁸ Samuel Bestvater et al., *Americans’ Views of and Experiences with Activism on Social Media*, Pew Rsch. Ctr. (June 29, 2023), <https://perma.cc/CQF7-E6DE>.

⁹ Emily A. Vogels & Risa Gelles-Watnick, *Teens and Social Media: Key Findings from Pew Research Center Surveys*, Pew Rsch. Ctr. (Apr. 24, 2023), <https://perma.cc/6FC6-L3MA>.

¹⁰ Victoria Rideout et al., Common Sense, *The Common Sense Census: Media Use by Tweens and Teens* 41 (2021), <https://perma.cc/2MUC-WT78>.

¹¹ Jason Kelley, *Thousands of Young People Told Us Why the Kids Online Safety Act Will Be Harmful to Minors*, EFF Deeplinks Blog (Mar. 15, 2024), <https://perma.cc/SGL7-3YY7>.

Places of worship use social media to share information about events, livestream services, and foster community.¹² Social media is a vital source of religious and spiritual community and information for young people.¹³ One young person even created “The Robloxian Christians,” a place for kids on the Roblox gaming platform to pray for one another and talk about their faith.¹⁴ It is now a “youth-led virtual church ministry serving upwards of 40,000 young people from over 85 countries.”¹⁵

Finally, social media enables individuals whose voices would otherwise not be heard to make vital and even lifesaving connections, and to share their unique perspectives.¹⁶ For example, people with disabilities use social media to build community, reduce isolation and stigma, and educate others.¹⁷ Survivors of

¹² Rebecca Heilweil, *Religious Leaders Are Becoming Content Creators to Keep Their Followers Engaged*, Vox (Sep. 18, 2020), <https://perma.cc/36HP-CVC3>.

¹³ See Elizabeth Dias, *Facebook’s Next Target: The Religious Experience*, N.Y. Times (July 25, 2021), <https://perma.cc/8HEX-JJAY>.

¹⁴ Joely Johnson Mork, *Teen’s Online Church Draws Young People from Around the World*, Faith & Leadership (Aug. 23, 2016), <https://perma.cc/63CJ-VCS3>.

¹⁵ *The Robloxian Christians*, Exponential, <https://perma.cc/T3DH-HDFB>.

¹⁶ See, e.g., Brooke Auxier, *Social Media Continue to Be Important Political Outlets for Black Americans*, Pew Rsch. Ctr. (Dec. 11, 2020), <https://perma.cc/DT56-RGG5>; Carrie Back, *How Indigenous Creators Are Using TikTok to Share Their Cultures*, Travel & Leisure (Oct. 21, 2022), <https://perma.cc/N7PT-Z784>.

¹⁷ Fortesa Latifi, *Chronic Illness Influencers on TikTok Are Showing the Reality of Being Sick*, Teen Vogue (Sep. 22, 2022), <https://perma.cc/3SBJ-4K5R>; Kait

domestic violence rely on the accessibility and anonymity of online communities to seek advice and resources.¹⁸ Social media use has been shown to reduce loneliness, social isolation, and depression in rural and elderly populations, both of which face limited mobility and decreased ability to socialize in person.¹⁹ And many young LGBTQ+ people who face discrimination and judgment offline turn to social media for community and support.²⁰

Social media thus helps minors develop their own ideas, learn to express themselves, and engage productively with others in our democratic public sphere.²¹

Sanchez, *How a Teen Punk Led a Movement for Disabled People Online*, Verge (July 27, 2021), <https://perma.cc/9AWZ-9QDA>.

¹⁸ Tully O’Neill, “*Today I Speak*”: *Exploring How Victim-Survivors Use Reddit*, Int’l J. for Crime, Just. & Soc’y Democracy, Mar. 2018, at 44, 44–45, <https://perma.cc/8ZS7-UV77>; see also, e.g., J.L. Heinze, *Online Communities for Survivors: Websites and Resources Offering Support and Health*, Nat’l Sexual Violence Res. Ctr. (Mar. 1, 2022), <https://perma.cc/7J6K-2HTW>.

¹⁹ Keith N. Hampton et al., *Disconnection More Problematic for Adolescent Self-Esteem Than Heavy Social Media Use: Evidence from Access Inequalities and Restrictive Media Parenting in Rural America*, 41 Soc. Sci. Comput. Rev. 626 (Apr. 2023), <https://perma.cc/YHH8-VQC7>; Erica Chen et al., *Online Social Networking and Mental Health Among Older Adults: A Scoping Review*, 41 Canadian J. on Aging 26, 26–27 (2022), <https://perma.cc/J7NL-3UKZ>.

²⁰ See Claire Cain Miller, *For One Group of Teenagers, Social Media Seems a Clear Net Benefit*, N.Y. Times (May 24, 2023), <https://perma.cc/A4TK-ED3R>; Ammar Ebrahim, *TikTok: ‘I Didn’t Know Other LGBT Muslims Existed,’* BBC (Nov. 28, 2020), <https://www.bbc.com/news/av/uk-55079954>.

²¹ See Rainier Harris, *How Young People Use Social Media to Engage Civically*, PBS (Nov. 5, 2020), <https://perma.cc/C434-65F4>; Jessica L. Hamilton et al., *Re-Examining Adolescent Social Media Use and Socioemotional Well-Being Through the Lens of the COVID-19 Pandemic*, 17 Persp. Psych. Sci. 662, 671 (May 2022),

B. The First Amendment Protects the Vast Majority of Social Media Activity for Minors and Adults Alike.

Though Arkansas seeks to justify the Act through its concerns about the impact of social media on minors, outside of the narrow category of sexually explicit content that is “harmful to minors,” people under the age of 18 generally enjoy the same First Amendment rights and protections as adults. The Supreme Court has expressly held that the government cannot “create a wholly new category of content-based regulation that is permissible only for speech directed at children.” *Brown*, 564 U.S. at 793–94 (rejecting government’s argument that it can regulate violent speech communicated to minors just as it can sexual speech that is harmful to minors).

The Supreme Court’s recent decision in *Paxton* is not to the contrary and does not save the Act. There, the Supreme Court held that a law that aimed to block minors’ access to content that is obscene as to minors was subject to intermediate scrutiny only because minors have no First Amendment right to access such speech.²² That law was thus “an exercise of Texas’s traditional power

<https://perma.cc/N8VQ-8A4N> (“Social media provides readily-accessible tools for teens to share developing thoughts and experiment with new social identities, particularly without access to traditional methods.”).

²² The Supreme Court left open the question of precisely whose perspective matters when it comes to defining “harmful to minors” content, suggesting for example that, at a minimum, it would make no sense to assess obscenity from the

to prevent minors from accessing speech that is obscene from their perspective” and its “burden [on] adults’ rights to access such speech . . . ha[d] ‘only an incidental effect on protected speech.’” *Paxton*, 145 S. Ct. at 2306. The Court repeatedly disclaimed any application of its decision to regulations of “fully protected speech.” *Id.* at 2310, 2315 n.12, 2316 n.13. Highlighting the narrowness of its ruling, the Court left open the question of whether the Texas law violated the First Amendment as applied to websites that host not only content that is obscene as to minors, but also speech that is protected for both minors and adults. *Id.* at 2308 n.7.

Strict scrutiny remains “the standard for reviewing the direct targeting of fully protected speech.” *Id.* at 2310. For that reason, and as explained in further detail below, strict scrutiny is the governing standard here, notwithstanding the fact that “the protection of children is the object.” *Brown*, 564 U.S. at 804–05. That a speaker or listener is young is no reason to diminish their rights, but calls instead “for scrupulous protection of [their] Constitutional freedoms . . . if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943).

perspective of a pre-adolescent, who would lack any “concept of sexuality.” *Paxton*, 145 S. Ct. at 2308 n.7.

As the examples in Section I.A demonstrate, socially valuable speech is abundant on social media. But bedrock First Amendment principles provide that access to social media is protected even if its social value is not obvious, or even when Arkansas deems it to be harmful. *See Snyder v. Phelps*, 562 U.S. 443, 458 (2011); *Carey v. Population Servs. Int'l*, 431 U.S. 678, 701 (1977); *Reno v. ACLU*, 521 U.S. 844, 874–75 (1997). And First Amendment principles apply to new forms of communication regardless of their aesthetic and moral value. *See Brown*, 564 U.S. at 790.

For these reasons, notwithstanding societal fears about minors' exposure to new technologies and mediums for expression, the Supreme Court has struck down legislation imposing age limitations on access to constitutionally protected speech, from violent video games, *see Brown*, 564 U.S. at 789, to non-obscene sexual expression online, *Reno*, 521 U.S. at 874, to drive-in movies, *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213–14 (1975). Even where the laws are only “intended to regulate expression accessible to minors,” they are “overbroad” if they reach beyond speech that is obscene as to minors. *Erznoznik*, 422 U.S. at 214.

Lower courts have agreed. As the Seventh Circuit explained in striking down a ban on violent video games, “[minors] must be allowed the freedom to form their political views on the basis of uncensored speech *before* they turn eighteen, so that their minds are not a blank when they first exercise the franchise.”

Am. Amusement Mach. Ass’n v. Kendrick, 244 F.3d 572, 577 (7th Cir. 2001).

Otherwise, they “are unlikely to become well-functioning, independent-minded adults and responsible citizens,” because “[t]o shield children right up to the age of 18 from exposure to [troubling or potentially harmful ideas] would not only be quixotic, but deforming; it would leave them unequipped to cope with the world as we know it.” *Id.*

II. THE ACT VIOLATES MINORS’ AND ADULTS’ FIRST AMENDMENT RIGHTS.

A. The Act Impermissibly Prohibits Minors from Accessing and Engaging in Protected Speech.

The Act is content-based and therefore subject to strict scrutiny. *See Brown*, 564 U.S. at 799. A website’s “choices about whether and how to disseminate user-generated expression ‘convey a message about the type of community the platform seeks to foster,’” including “the ideas that: (1) user-generated content is not less valuable than speech authored by the websites themselves; and (2) social interactions and connections . . . have unique value for online communities.” *NetChoice, LLC v. Yost*, 778 F. Supp. 3d 923, 953 (S.D. Ohio 2025) (citation omitted). Moreover, the Act specifically distinguishes among platforms based on the content they host. The Act excludes, for example, platforms that host only their own content, Ark. Code Ann. § 4-88-1401(11)(A), and email service providers. Ark. Code Ann. § 4-88-1401(5)(B).

Arkansas cannot condition access to protected speech on express parental consent, as the Act does for anyone under 16. And it especially cannot do so in a content-based way. *Brown* is particularly instructive on this point. In that case, the Supreme Court struck down a law that prohibited selling or renting violent video games to minors—in effect, barring minors’ access to that expression without parental consent.

There, the state had “claim[ed] that the Act is justified in aid of parental authority: By requiring that the purchase of violent video games can be made only by adults, the Act ensures that parents can decide what games are appropriate.” *Brown*, 564 U.S. at 802. While recognizing that both this aim and the legislature’s goal of “addressing a serious social problem” were “legitimate,” the Court held that, where First Amendment rights are involved, such aims “must be pursued by means that are neither seriously underinclusive nor seriously overinclusive”—and that the statute failed to do so. *Id.* at 805.

“As a means of protecting children from portrayals of violence, the legislation is seriously underinclusive, not only because it excludes portrayals other than video games, but also because it permits a parental . . . veto.” *Id.* If the material is indeed “dangerous [and] mind-altering,” the Court explained, it did not make sense to “leave [it] in the hands of children so long as one parent . . . says it’s OK.” *Id.* at 802.

Equally, “as a means of assisting concerned parents,” the Court held that the regulation “is seriously overinclusive because it abridges the First Amendment rights of young people whose parents . . . think violent video games are a harmless pastime.” *Id.* at 805. “While some of the legislation’s effect may indeed be in support of what some parents of the restricted children actually want, its entire effect is only in support of what the State thinks parents *ought to want.*” *Id.* at 804; *cf. Reno*, 521 U.S. at 878 (holding that law prohibiting online distribution of certain materials to minors was overbroad in part because it would override parents who wanted their kids to “obtain information on the Internet that [they], in [their] parental judgment, deemed appropriate”).

The Court thus rejected the idea “that the state has the power to prevent children from hearing or saying anything *without their parents’ prior consent,*” for “[s]uch laws do not enforce *parental* authority over children’s speech and religion; they impose *governmental* authority, subject only to a parental veto.” *Brown*, 564 U.S. at 795 n.3. The Court also expressed “doubts that punishing third parties for conveying protected speech to children *just in case* their parents disapprove of that speech is a proper governmental means of aiding parental authority.” *Id.* at 802. “Accepting that position would largely vitiate the rule that ‘only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to [minors].’” *Id.* (quoting *Erznoznik*, 422 U.S. at 212–13).

Each of those holdings governs here: To the extent the Act is an attempt to protect minors under 16 from harm, it is “seriously underinclusive . . . because it permits a parental . . . veto.” *Id.* at 805. To the extent that the Act is an attempt to “assist[] concerned parents,” it is “seriously overinclusive because it abridges the First Amendment rights of young people whose parents . . . think [social media use is] a harmless pastime.” *Id.* And it also raises First Amendment concerns because it seeks to punish third parties “*just in case* their parents disapprove.” *Id.* at 802.

The Act’s parental-consent provision also imposes additional burdens on minors under 16 and parents—who must prove both that they have the requisite parent or guardian relationship and that the parent has indeed given consent—that fail to pass constitutional muster. The Act does not specify how social media services should identify a minor users’ parents or verify that the parent consents to their childrens’ use of the service. Presumably, the types of evidence that will be necessary to verify parental status and prove consent will carry privacy and security risks similar to the age-verification requirements described in the next section.

Further, because the Act does not specify the method of consent, the requirement cannot satisfy First Amendment scrutiny because traditional methods, such as verification by mail or phone, can be easily circumvented by those willing to erroneously convey their parents’ consent. The Act thus does not meaningfully

advance the government’s asserted interests in providing parents with the ability to limit or prohibit their children’s internet use. *See Brown*, 564 U.S. at 801–02 (holding that law prohibiting minors’ purchase of violent video games was “seriously underinclusive” because the parental consent provision could be easily sidestepped).²³

B. The Act Also Burdens the First Amendment Rights of Adults and Minors by Imposing Age Verification.

The Act also violates the First Amendment rights of all social media users by requiring platforms to verify the age of every user. *See Ashcroft v. ACLU*, 542 U.S. 656, 667 (2004); *Paxton*, 145 S. Ct. at 2309 (recognizing that “submitting to age verification is a burden on the exercise of [First Amendment] rights”).²⁴ The

²³ Here, even if the Court concludes that Arkansas’ law is subject only to intermediate scrutiny, the parental consent requirement flunks the First Amendment. If the state’s concern is the amount of time teenagers spend on social media, or sexual predation online, “specific, narrowly tailored laws that” target those specific concerns, rather than minors’ ability to access social media more broadly, “must be the State’s first resort.” *Cf. Packingham*, 582 U.S. at 107 (holding that ban on social media for certain users fails intermediate scrutiny where harmful conduct that motivated the state could be better targeted through restrictions on the conduct itself).

²⁴ Though *Paxton* upheld an age-verification scheme, its holding does not govern the Act’s age-verification requirement for two reasons. First, as discussed above, unlike the law at issue in *Paxton*, the Act is a content-based regulation of speech that is protected for everyone, thus triggering strict scrutiny. Second, even if the Court were somehow to hold that intermediate scrutiny applies, age verification to access harmful-to-minors content, as in *Paxton*, satisfies that scrutiny only because First Amendment rights to access such content differ by age. *Paxton*, 145 S. Ct. at 2317. Where, as here, the regulated content is protected for all ages, both the

Act requires social media services to implement age-verification via government-issued ID or by other commercially reasonable methods. Ark. Code Ann. § 4-88-1402(c)(2). As the district court found, in addition to checking ID, other common verification methods include collecting biometric information to estimate users' ages. *Griffin*, 2025 WL 978607 at *1. The Act thus subjects all Arkansas internet users to either disclosing their ID or being subjected to invasive biometric analysis. And as discussed above, the services are likely to rely on governmental ID to prove parent-child relationships and parental consent.

1. Many verification requirements will either chill or entirely block access to lawful speech.

When social media services implement verification via government-issued identification, it will “serve as a complete block to adults who wish to access adult material [online] but do not” have the necessary form of identification. *PSINet, Inc. v. Chapman*, 362 F.3d 227, 237 (4th Cir. 2004); *see also Reno*, 521 U.S. at 856; *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 99 (2d Cir. 2003) (invalidating age-assurance requirement that would make “adults who do not have [the necessary form of identification] . . . unable to access those sites”). The same will be true for any child under 16 of such an adult, who will struggle to prove their relationship to their parents or guardian.

significance of the government's interest in burdening access to it *and* age verification's ability to in fact advance any interest are both far more suspect.

About 15 million adult U.S. citizens do not have a driver’s license, and about 2.6 million do not have any form of government-issued photo ID.²⁵ Estimates show another 28.6 million adult citizens use government IDs that lack their current names or addresses.²⁶

Using biometric data, such as scanning users’ faces, to comply with the Act results in additional First Amendment harms. First, biometric analysis to determine a user’s age is inherently imprecise, as the technology essentially guesses a user’s age based on the information it has collected.²⁷ The imprecision means that the Act will block adults who are mis-categorized as minors and allow minors to access social media because the system guesses that they are adults.²⁸ These systems are also more likely to misidentify ages for some demographics, including people of

²⁵ Jillian Andres Rothschild et al., Univ. Md. Ctr. for Democracy & Civic Engagement, *Who Lacks ID in America Today? An Exploration of Voter ID Access, Barriers, and Knowledge 2* (2024), <https://perma.cc/DL9A-5T8L>.

²⁶ *Id.* at 2, 5; *see also* Michael J. Hanmer & Samuel B. Novey, Univ. Md. Ctr. for Democracy & Civic Engagement, *Who Lacked Photo ID in 2020?: An Exploration of the American National Election Studies 5* (2023), <https://perma.cc/X7JS-J7R7> (“Over 1.3 million voting-age citizens in [Georgia, Indiana, Kansas, Mississippi, Tennessee, and Wisconsin] likely did not have the identification needed to vote in 2020.”).

²⁷ *See* Rindala Alajaji, *Age Verification, Estimation, Assurance, Oh My! A Guide to the Terminology*, EFF Deeplinks Blog (Oct. 30, 2025), <https://www.eff.org/deeplinks/2025/10/age-verification-estimation-assurance-oh-my-guide-terminology>.

²⁸ *See id.* (explaining how biometric systems usually group users into age ranges, such as between age 15 and 19).

color, people with disabilities, and people whose faces are not detected by the system, failing a wide range of internet users.²⁹

2. Online age-verification impermissibly burdens the right to be anonymous online.

Having to provide identifying information to services seeking to comply with the Act—whether for age verification or to check parental relationships and consent—would also impermissibly burden the First Amendment right to anonymity. *See Am. Booksellers Found.*, 342 F.3d at 99 (age verification “require[s] that website visitors forgo the anonymity otherwise available on the internet”).

A reported 86 percent of internet users have taken steps online to minimize their digital footprints, and 55 percent have done so to “avoid observation by specific people, organizations, or the government.”³⁰ Anonymity is a time-honored, historic tradition that is “an aspect of the freedom of speech protected by the First Amendment”—no matter whether its use is “motivated by fear of economic or

²⁹ See Nick Evershed & Josh Nicholas, *Social media ban trial data reveals racial bias in age checking software: just how inaccurate is it?*, *The Guardian* (Sept. 18, 2025), <https://www.theguardian.com/news/2025/sep/19/how-accurate-are-age-checks-for-australias-under-16s-social-media-ban-what-trial-data-reveals>; Matt Burgess, *When Face Recognition Doesn't Know Your Face Is a Face*, *Wired* (Oct. 15, 2025), <https://www.wired.com/story/when-face-recognition-doesnt-know-your-face-is-a-face/>.

³⁰ Lee Rainie et al., *Anonymity, Privacy, and Security Online*, Pew Rsch. Ctr. (Sep. 5, 2013), <https://perma.cc/5BUP-J96F>.

official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one’s privacy as possible.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 341–42 (1995). “As with other forms of expression, the ability to speak anonymously on the Internet promotes the robust exchange of ideas and allows individuals to express themselves freely[.]” *In re Anonymous Online Speakers*, 661 F.3d 1168, 1173 (9th Cir. 2011).

Without anonymity, “the stigma associated with the content of [certain] sites may deter adults from visiting them” at all. *PSINet, Inc.*, 362 F.3d at 236–37; *see also Reno*, 521 U.S. at 856. The same is true for minors who must obtain parental consent, and it may well cause parents to refuse permission to access certain social media simply because they fear that a record of such access might reflect poorly on their children or them. The absence of anonymity will chill users’ ability to dissent, discuss “sensitive, personal, controversial, or stigmatized content,” or seek medical or psychiatric help online.³¹ *ACLU v. Gonzales*; *see also State v. Weidner*, 235 Wis. 2d 306, 320, 611 N.W.2d 684, 690 (age verification “constitutes an encroachment into the personal lives of those who use the internet precisely because it affords anonymity”).

³¹ *See, e.g.*, Sarah Kendal et al., *How a Moderated Online Discussion Forum Facilitates Support for Young People with Eating Disorders*, 20 *Health Expectations* 98, 99 (Feb. 2017), <https://perma.cc/B9Q4-RRNR>.

3. Many age-verification systems put internet users' sensitive data at risk.

Even when users are comfortable foregoing anonymity, legitimate privacy and security concerns may dissuade them from accessing social media. “Requiring Internet users to provide . . . personally identifiable information,” whether to verify age or parental relationship, “would significantly deter many users from entering the site, because Internet users are concerned about security on the Internet and . . . afraid of fraud and identity theft[.]” *Gonzales*, 478 F. Supp. 2d at 806; *see also* *ACLU v. Mukasey*, 534 F.3d 181, 197 (3d Cir. 2008); *PSINet, Inc. v. Chapman*, 167 F. Supp. 2d 878, 889 (W.D. Va. 2001), *aff’d*, 362 F.3d 227 (4th Cir. 2004) (“Fear that cyber-criminals may access [identifying information] . . . may chill the willingness of some adults to participate in the ‘marketplace of ideas’” online).

The personal data that platforms may be required to collect is sensitive and often immutable. *See, e.g.*, Driver Priv. Prot. Act, 18 U.S.C. §§ 2721–25. Whereas usernames, passwords, and even credit card information can easily be changed, the information contained in a government-issued ID (such as date of birth, name, and home address) is much more permanent.

Although Arkansas ostensibly enacted the Act out of concern for minors’ wellbeing, the law’s online age-verification regime will make minors and adults less safe given the realities of online advertising and data insecurity. Personal

information collected online sells for astonishing profits.³² Because all online data is transmitted through intermediaries, the information a user shares to verify identity or parental relationship can be transmitted beyond the site.³³ Moreover, third-party trackers managed by data brokers, advertisers, and other companies constantly collect data about a user’s browsing activity on nearly every site.³⁴

At a minimum, the data will present a potential target for data thieves. A record 3,205 data breaches occurred in 2023, up 78 percent from the year prior, and far exceeding the previous record of 1,860 breaches in 2021.³⁵ Over 350 million people—more than the entire population of the United States—have been affected, and 69 percent of consumers have been victims of identity crime more than once.³⁶

Compounding this concern, children are attractive targets for identity theft

³² See *Digital Advertising in the United States – Statistics & Facts*, Statista (May 20, 2025), <https://perma.cc/Y9P9-VZB7> (the U.S. digital advertising market boasted “a revenue of 317 billion dollars in 2024”).

³³ See Bennett Cyphers & Gennie Gebhart, *Behind the One-Way Mirror: A Deep Dive into the Technology of Corporate Surveillance*, EFF Deeplinks Blog (Dec. 2, 2019), <https://perma.cc/7B5F-S376>.

³⁴ *Id.*

³⁵ Identity Theft Res. Ctr., *2023 Data Brach Report 3* (2024), <https://perma.cc/3VUZ-52YF>.

³⁶ *Id.*; see also Press Release, Identity Theft Res. Ctr., *ITRC 2023 Consumer Impact Report: Record High Number of ITRC Victims Have Suicidal Thoughts* (Aug. 23, 2023), <https://perma.cc/26LK-ZRKU>.

due to their “uniquely valuable” unused Social Security numbers.³⁷ A 2021 study found that one in 50 U.S. children were victims of identity fraud, and one in 45 children had personal information exposed in a data breach.³⁸ The risk of data breach is likely to chill constitutionally protected expression.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court’s order and maintain the permanent injunction against the Act for violating the First Amendment rights of minors and adults.

Dated: January 28, 2025

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³⁷ Richard Power, Carnegie Mellon CyLab, *Child Identity Theft: New Evidence Indicates Identity Thieves Are Targeting Children for Unused Social Security Numbers* 3 (2011), <https://perma.cc/RR56-VE2H> (“A child’s identity is a blank slate, and the probability of discovery is low, as the child will not be using it for a long period of time.”).

³⁸ Javelin, *Child Identity Fraud: A Web of Deception and Loss* 5 (2021), <https://perma.cc/Z9P4-2U4B>.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify as follows:

1. This Brief of Amicus Curiae the Electronic Frontier Foundation. . . in Support of . . . [title of the brief] with the type-volume limitation of Fed. R. App. P. 32(a)(5) because this brief contains XXXX words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365, the word processing system used to prepare the brief, in 14-point Times New Roman font.

3. Pursuant to this Court's Local Rule 28A(h), the electronic version of this Brief of Amicus Curiae Electronic Frontier Foundation has been scanned for viruses and is virus-free.

Dated: January 28, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system, pursuant to Eighth Circuit Rule 25A.

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