IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-02724-DDD-MDB

ROBERT CLARK, individually and on behalf of all other persons similarly situated,

Plaintiff,

v.

INSTANT CHECKMATE, LLC, INTELIUS LLC, and TRUTHFINDER, LLC,

Defendants.

BRIEF OF STATES OF COLORADO, DELAWARE, ILLINOIS, INDIANA, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEBRASKA, NEVADA, NEW MEXICO, NORTH CAROLINA, NORTH DAKOTA, RHODE ISLAND, AND SOUTH DAKOTA AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE PARTIALLY OPPOSING DEFENDANTS' MOTION TO DISMISS

TABLE OF CONTENTS

I. INTRODUCTION 1
II. INTEREST OF THE AMICI STATES 1
III. ARGUMENT 2
A. Defendants' facial challenge fails at this early stage of litigation. 2
B. Section 304(4)(a)(I) regulates unprotected speech. 4
C. Even if selling cell phone numbers without consent were protected speech, section 304(4)(a)(I) is a Constitutional regulation of commercial speech. 5
1. At most, section 304(4)(a)(I) regulates commercial speech 5
2. Section 304(4)(a)(I), which regulates, at most, commercial speech, survives intermediate scrutiny. 7
a) Colorado has substantial interests in protecting individual privacy and preventing fraud. 7
b) Section 304(4)(a)(I) furthers Colorado's interests and is no more restrictive than necessary 11
D. Section 304(4)(a)(I) is not unconstitutionally vague 15
IV. CONCLUSION 16

TABLE OF AUTHORITIES

CASES

ACA Connects v. Frey, 471 F. Supp. 3d 318 (D. Me. 2020)..... 13, 14

ACLU v. Clearview AI, 2021 WL 4164452 (Ill. Cir. Ct. Aug. 27, 2021) 14

Bd. of Trs. v. Fox, 492 U.S. 469 (1989)..... 6, 12, 15

Boelter v. Hearst Commc'ns, Inc., 192 F. Supp. 3d 427 (S.D.N.Y. 2016) 13, 15

Bolger v. Youngs Drug Products Corp., 463 U.S. 60 (1983) 6

Bond v. United States, 572 U.S. 844 (2014) 8

Cardtoons, L.C. v. Major League Baseball, 95 F.3d 959 (10th Cir. 1996)..... 6

Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York, 447 U.S. 557 (1980) 4, 6

DoorDash, Inc. v. City of New York, No. 21 CIV. 10347 (AT), 2025 WL 18276991 (S.D.N.Y. June 30, 2025)..... 13

Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749 (1985)..... 5

Edenfield v. Fane, 507 U.S. 761 (1993) 8

Fla. Bar v. Went For It, Inc., 515 U.S. 618 (1995) 7

Free Speech Coal., Inc. v. Paxton, 145 S. Ct. 2291 (2025)..... 13

Grayned v. City of Rockford, 408 U.S. 104 (1972) 15

Greater New Orleans Broad. Ass'n, Inc. v. United States, 527 U.S. 173 (1999) 11

King v. Gen. Info. Serv., Inc., 903 F.Supp.2d 303 (E.D. Pa 2012) 8, 14

Lorillard Tobacco Co. v. Reilly, 533 U.S. 525 (2001)..... 12

Mainstream Mktg. Servs., Inc. v. F.T.C., 358 F.3d 1228 (10th Cir. 2004) 8, 14

Minority Tele. Project Inc. v. FCC, 649 F. Supp. 2d 1025 (N.D. Cal. 2009)..... 15

Moody v. NetChoice, LLC, 603 U.S. 707 (2024) 2, 3

Nat'l Cable & Telecomms. Ass'n v. FCC, 555 F.3d 996 (D.C. Cir. 2009) 13

Ohralik v. Ohio State Bar Assn., 436 U.S. 447 (1978)..... 6, 8

Ostergren v. Cuccinelli, 615 F.3d 263 (4th Cir. 2010) 8

Posters 'N' Things, Ltd. v. United States, 511 U.S. 513 (1994) 15

Rocky Mountain Wild v. United States Bureau of Land Mgmt., 445 F. Supp. 3d 1345 (D. Colo. 2020) 8

Rumsfeld v. Forum for Academic and Institutional Rights, Inc., 547 U.S. 47 (2006) 4

TikTok Inc. v. Garland, 604 U.S. 56, 70 (2025) 7

Ward v. Rock Against Racism, 491 U.S. 781 (1989) 14, 15

U.S. Dep't of Just. v. Reps. Comm. For Freedom of the Press, 489 U.S. 749 (1989) ... 11

U.S. Olympic Comm. v. Am. Media, Inc., 156 F. Supp. 2d 1200 (D. Colo. 2001) 6

United States v. Powell, 423 U.S. 87, 93 (1975) 15

United States v. Wenger, 427 F.3d 840, 846 (10th Cir. 2005) 7

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc. 425 U.S. 748 (1976) 4, 6

Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442 (2008) 3

STATUTES

18 U.S.C. 2721 11

47 U.S.C. 227 11

C.R.S. § 6-1-304 (2025) ..... *passim*

C.R.S. §§ 6-1-1301 to -1314 (2025) 10

C.R.S. §§ 6-1-301 to -305 (2025) 10

C.R.S. §§ 6-1-901 to -908 (2025) 11

Cal. Civ. Code § 1798.99.86 (2025) 11

Ga. Code Ann. § 46-5-28 (2025) 10

Tex. Util. Code Ann. § 64.202 (2025) 10

Wash. Rev. Code § 19.373.030 (2025) 11

SECONDARY SOURCES

Am. Bankers Ass'n, *SIM Swapping Scams*, https://www.aba.com/advocacy/community-programs/consumer-resources/protect-your-money/sim-swapping-scams (last visited Aug. 19, 2025) 9

Batuhan Kukul, *Personal data and personal safety: re-examining the limits of public data in the context of doxing*, Int'l Data Priv. L. no. 3, 2023., https://coag.gov/app/uploads/2025/08/Personal-data-and-personal-safety.pdf 10

Brian Gordon & Virginia Bridges, *Lawsuit blames Verizon for accused stalker showing up in Wake County with knife, rope*, The News & Observer (April 11, 2025), https://www.newsobserver.com/news/local/crime/article291166080.html 10

Brief of Amici Curiae State of Ohio, 40 Other States, and the District of Columbia Supporting Appellees, *Atlas Data Privacy Corp., et al v. We Inform LLC, et al.*, No. 25-1555 (3rd Cir. 2025) 10

Brooke Auxier et al., Pew Research Ctr., *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information* (Nov. 15, 2019), https://coag.gov/app/uploads/2025/08/Pew-Research-Center-Americans-and-Privacy.pdf 5

Colo. Governor's Office of Info. Tech., *Have You Been Smished?*, https://oit.colorado.gov/blog-post/have-you-been-smished (last visited Aug. 19, 2025) 9

Duke Sanford Cyber Policy Program, *Response from Duke University's Data Brokerage Research Project Federal Trade Commission (FTC) Rule on Commercial Surveillance and Data Security* (Oct. 2022), https://coag.gov/app/uploads/2025/08/Response-to-FTC-RFC-Duke-Data-Brokerage-2022.pdf 9

FCC, *Cell Phone Fraud*, https://www.fcc.gov/cell-phone-fraud (last visited Aug. 19, 2025) 9

Int'l Ass'n Priv. Pros., *State Privacy Legislation Tracker*, (last updated July 7, 2025), https://iapp.org/resources/article/us-state-privacy-legislation-tracker/ 11

Kesi Take et al., *What to Expect When You're Accessing: An Exploration of User Privacy Rights in People Search Websites* (2024), https://coag.gov/app/uploads/2025/08/What-to-Expect-When-Youre-Accessing.pdf12

Pew Research Ctr., *Mobile Fact Sheet* (Nov. 13, 2024), https://www.pewresearch.org/internet/fact-sheet/mobile/ 8

Scott Medintz, *Americans Want Much More Online Privacy Protection Than They're Getting* (Nov. 20, 2024), https://www.consumerreports.org/electronics/privacy/americans-want-much-more-online-privacy-protection-a9058928306/ 5

Yael Grauer et al., *Evaluating People-Search Site Removal Services* (Aug. 8, 2024), https://coag.gov/app/uploads/2025/08/Evaluating-People-Search-Site-Removal-Services.pdf 13

I. INTRODUCTION

The Colorado General Assembly recognizes that "the People of Colorado regard their privacy as a fundamental right and an essential element of their individual freedom." C.R.S. § 6-1-1302(1)(a)(I). To support this right, the General Assembly has enacted multiple laws over the past three decades that ensure that the personal data of Coloradans is not unnecessarily disclosed, misappropriated, or mishandled. One of these laws is the Prevention of Telemarketing Fraud Act ("PTFA"), which in relevant part, prohibits a person from publishing someone's cellular telephone number in a directory for a commercial purpose without their consent. C.R.S. § 6-1-304(4)(a)(I).

Defendants in this case, Instant Checkmate LLC, Intelius LLC, and Truthfinder, LLC, contend that the PTFA is unconstitutional on its face because it purportedly regulates non-commercial speech based on its content and fails to survive strict scrutiny. ECF 69 at 4-15. In the alternative, Defendants argue that the PTFA fails to satisfy intermediate scrutiny. *Id.* at 15. Defendants' arguments fail for two reasons.

First, Defendants' facial challenge fails at this early stage of litigation. Facial challenges are disfavored, and the record is insufficient for the Court to weigh hypothetical unconstitutional applications of the PTFA against the statute's constitutional applications. Second, the publication of private personal data for profit is not protected speech under the First Amendment. Even if it were, section 304(4)(a)(I) targets only commercial speech, which is subject to intermediate scrutiny. It survives that scrutiny. The PTFA promotes two substantial state interests—protecting individuals' data and guarding against fraud—and is no more restrictive than necessary to serve those interests.

II. INTEREST OF THE AMICI STATES

The States of Colorado, Delaware, Illinois, Indiana, Maine, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Rhode Island, and South Dakota and the District of Columbia have strong interests in protecting the

privacy, safety, and autonomy of their residents and their residents' personal data. In today's data-driven economy, personal information—including private cell phone numbers—is collected, shared, and sold with ease, often without an individual's knowledge or consent. The disclosure of such information exposes citizens to heightened risks of identity theft, financial fraud, stalking, harassment, and other serious harms.

Recognizing the growing threats posed by the unauthorized use and disclosure of personal information, the Colorado General Assembly amended the PTFA in 2005 to give individuals control over the publication of their cell phone numbers in commercial directories. C.R.S. § 6-1-304(4)(a)(I). Similar privacy measures have been adopted in other amici states in response to the rapid growth of the commercial market for data.

The First Amendment does not bar states from protecting residents against fraud, invasions of privacy, and other harms associated with the misuse of personal data. Colorado and amici states have compelling interests in safeguarding individuals from the nonconsensual exploitation of their personal information and may mitigate harms through targeted legislative solutions like the PTFA. Because the PTFA regulates, at most, commercial speech, this Court should uphold it as a valid exercise of Colorado's authority to protect the privacy, safety, and autonomy of its people.

III. ARGUMENT

A. Defendants' facial challenge fails at this early stage of litigation.

Defendants argue that section 304(4)(a)(I) facially violates the First Amendment. ECF 69 at 4. This argument fails because, at this early stage of litigation, the factual record is insufficient to evaluate all applications of section 304(4)(a)(I).

Facial challenges are disfavored because they "threaten to short circuit the democratic process by preventing duly enacted laws from being implemented in constitutional ways." *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (internal quotation omitted). In a facial challenge, a court must be able to determine a statute's "full

set of applications, evaluate which are constitutional and which are not, and compare the one to the other." *Id*. at 718. A statute is only unconstitutional if its unconstitutional applications "substantially outweigh" its constitutional ones. *Id.* at 724.

The allegations in the amended complaint are insufficient for the Court to assess the full set of applications of section 304(4)(a)(I). Section 304(4)(a)(I) prohibits a person from knowingly "[l]ist[ing] a cellular telephone number in a directory for a commercial purpose" without consent. The amended complaint contends that Defendants violated section 304(4)(a)(I) by "list[ing] cellular telephone numbers . . . in their [online] for-sale and for-profit directories[.]" ECF 58 at 3. But listing a number in an online for-sale or for-profit directory is only one way of listing a number "in a directory for a commercial purpose[.]" *See* Defendants' Motion to Dismiss First Amended Complaint, ECF 69 at 16 (stating that "listing of cellphone numbers for use in commercial telemarketing" is different from the behavior that the Plaintiff alleges the Defendants engaged in).

Without knowledge of all (or at least most) of the ways of listing a number "in a directory for a commercial purpose[,]" the Court cannot know the full set of applications of section 304(4)(a)(I). Without information needed to assess the full set of applications of the statute, the Court cannot "evaluate which are constitutional and which are not, and compare the one to the other." *Moody*, 603 U.S. at 718; *see also*, *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008) (facial challenges "raise the risk of premature interpretation of statutes on the basis of factually barebones records.") (internal quotation omitted). Defendants' facial challenge must fail because the allegations in the amended complaint do not implicate the full set of section 304(4)(a)(I)'s applications.

B. Section 304(4)(a)(I) regulates unprotected speech.

Defendants contend that section 304(4)(a)(I) violates the First Amendment. ECF 69 at 4. However, not all speech receives First Amendment protection, and section 304(4)(a)(I) regulates unprotected speech.

The First Amendment only protects conduct that is "inherently expressive." *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 66 (2006). Section 304(4)(a)(I) does not regulate inherently expressive conduct. Cell phone numbers are a commodity that Defendants collect, repackage, and sell to their customers. The content of the numbers is immaterial to Defendants. Further, nothing in the record suggests that Defendants' directories—or the directories of any other publisher of cell phone numbers—have a specific viewpoint or communicate a message or perspective.

The First Amendment may protect commercial speech that provides important information to the public. For instance, the Supreme Court stated in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.* that a "[p]urely factual matter *of public interest* may claim protection." 425 U.S. 748, 762 (1976) (emphasis added). Defendants seek only profit from the sale of private cell phone numbers, and the dissemination of private cell phone numbers does not implicate purchasers' constitutionally protected interests in obtaining information because the information does not inform consumers about the prices, choices, risks, or benefits of certain products or services. *See id.* at 763 (describing the First Amendment value to consumers of commercial speech about the price of prescription drugs); *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 563 (1980) (explaining that false or misleading commercial speech is not protected by the First Amendment because it has no value to consumers).

Selling a directory of cell phone numbers involves providing private, personally identifying information about individuals without their consent. Surveys show that

individuals do not want this information to be shared. *See, e.g.*, Brooke Auxier et al., Pew Research Ctr., *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information* (Nov. 15, 2019), https://coag.gov/app/uploads/2025/08/Pew-Research-Center-Americans-and-Privacy.pdf; Scott Medintz, *Americans Want Much More Online Privacy Protection Than They're Getting* (Nov. 20, 2024), https://www.consumerreports.org/electronics/privacy/americans-want-much-more-online-privacy-protection-a9058928306/ (on file with the Colorado Attorney General's Office). The circumstances under which First Amendment protections may extend to the publication of commercial information of public interest do not apply to the PTFA.

C. Even if selling cell phone numbers without consent were protected speech, section 304(4)(a)(I) is a Constitutional regulation of commercial speech.

Defendants contend that section 304(4)(a)(I) is unconstitutional because it is a content-based restriction on speech subject to strict scrutiny and is poorly tailored to serve Colorado's legitimate interests. ECF 69 at 4-15. Even if the speech regulated by section 304(4)(a)(I) were protected by the First Amendment, the statute regulates only commercial speech, which is subject to no more than intermediate scrutiny. Section 304(4)(a)(I) survives that scrutiny because it is adequately tailored to serve Colorado's legitimate interests.

1. At most, section 304(4)(a)(I) regulates commercial speech.

Section 304(4)(a)(I) regulates, at most, protected commercial speech. Commercial speech traditionally receives less First Amendment protection than other forms of speech. *See*, *e.g.*, *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 758 n.5 (1985); *Bates v. State Bar of Arizona*, 433 U.S. 350, 363 (1977). Specifically, "'commercial speech [enjoys] a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values,' and is subject to 'modes of regulation that might be impermissible in the realm of noncommercial expression.'" *Bd. of Trs. v.*

Fox, 492 U.S. 469, 477 (1989) (citing *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 456 (1978)); *see also*, *Virginia State Bd. of Pharmacy*, 425 U.S. at 772 n.24 ("commercial speech may be more durable than other kinds" and there is "little likelihood of its being chilled by proper regulation and forgone entirely").

To determine whether speech is commercial speech, courts examine: 1) whether the speech is an advertisement; 2) whether it refers to a particular product; and 3) whether the speaker has an economic motivation. *See, e.g.*, *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 65 (1983). These factors are not dispositive but rather guideposts to help determine whether regulated speech is commercial speech. *Id.* at 67 n.14 ("Nor do we mean to suggest that each of the characteristics present in this case must necessarily be present in order for speech to be commercial."). The Supreme Court has also defined commercial speech as "expression related solely to the economic interests of the speaker and its audience." *Cent. Hudson*, 447 U.S. at 561. "Any consideration of whether speech is commercial should rest on the commonsense distinction between speech proposing a commercial transaction and other varieties of speech." *U.S. Olympic Comm. v. Am. Media, Inc.*, 156 F. Supp. 2d 1200, 1207 (D. Colo. 2001) (cleaned up).

Section 304(4)(a)(I), on its face, regulates commercial speech. The statute only regulates the publication of cell phone numbers "for a commercial purpose[.]" C.R.S. § 6-1-304(4)(a)(I). Plaintiff alleges that Defendants "sell[] Plaintiff's and Class Members' cell phone numbers and accompanying information to their customers." ECF 58 at 27. Non-expressive information that is collected and sold solely for profit is "expression related solely to the economic interests of the speaker[,]" 447 U.S. at 561, and is therefore commercial speech.

There is nothing in a telephone directory that provides commentary or critique of a social institution or other matter of public interest. Because there is no commentary (indeed, no expressive element at all), Defendants' reliance on *Cardtoons, L.C. v. Major*

League Baseball Player's Ass'n, 95 F.3d 959 (10th Cir. 1996) is misplaced. There, the Tenth Circuit declined to apply the commercial speech doctrine to parody trading cards that provide social commentary on public figures and baseball players because the cards provide "commentary on an important social institution." 95 F.3d at 969. Cell phone numbers provide no such commentary.

In summary, Defendants do not argue anything other than a purely economic motivation for sharing residents' cell phone numbers with their customers. Nor is the sale of this information expressive. Consequently, the regulated speech is, at most, protected commercial speech. Statutes regulating commercial speech are constitutional, so long as they meet intermediate scrutiny. *United States v. Wenger*, 427 F.3d 840, 846 (10th Cir. 2005).

2. Section 304(4)(a)(I), which regulates, at most, commercial speech, survives intermediate scrutiny.

A statute that is subject to intermediate scrutiny, like section 304(4)(a)(I) is constitutional "'if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests.'" *TikTok Inc. v. Garland*, 604 U.S. 56, 70 (2025) (quoting *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180, 189 (1997)). Section 304(4)(a)(I) advances the important governmental interests of protecting Colorado residents' private cell phone numbers and guarding against misleading and deceptive telemarketing practices. It also does not burden substantially more speech than is necessary to advance those interests. Therefore, it survives intermediate scrutiny.

a) Colorado has substantial interests in protecting individual privacy and preventing fraud.

Courts have consistently held that protecting privacy is a substantial state interest. *See, e.g.*, *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 625 (1995) (collecting cases);

Edenfield v. Fane, 507 U.S. 761, 769 (1993) (protecting potential clients' privacy is a substantial state interest); *Ostergren v. Cuccinelli*, 615 F.3d 263, 280 (4th Cir. 2010) (protecting individual privacy by limiting the disclosure of Social Security Numbers may be "a state interest of the highest order"); *King v. Gen. Info. Serv., Inc.*, 903 F. Supp. 2d 303, 307 (E.D. Pa 2012) (protecting consumer privacy is a significant state interest). The Tenth Circuit has even recognized that individuals have an "interest in avoiding unwanted communication [as] part of the broader right to be let alone." *Mainstream Mktg. Servs., Inc. v. F.T.C.*, 358 F.3d 1228, 1238 (10th Cir. 2004). Restricting the nonconsensual commercial publication of personal cell phone numbers is an important method of protecting individuals' privacy. *See id*.; *Rocky Mountain Wild v. United States Bureau of Land Mgmt.*, 445 F. Supp. 3d 1345, 1366 (D. Colo. 2020) (FOIA case finding that there "is no public interest in the disclosure of [a] personal cell phone number").

Protecting individuals from fraud and deception is likewise a substantial state interest. *See, e.g.*, *Ohralik*, 436 U.S. at 462 (1978) (upholding a ban on in-person solicitation because of the potential for fraud and other "vexatious conduct"); *Mainstream Mktg.*, 358 F.3d at 1238 (government has a substantial interest in preventing abusive and coercive sales practices). Colorado's interest in protecting its citizens from fraud, deception, and other harmful conduct is consistent with the long-recognized "police power" of states. *See Bond v. United States*, 572 U.S. 844, 854 (2014) (describing state police powers and contrasting states' authority with that of Congress).

Amici states' interest in protecting residents from the disclosure of their cell phone numbers in order to protect their privacy and protect them from fraud has only grown since section 304(4)(a)(I) was added to the PTFA in 2005. Ninety-eight percent of American consumers own a cell phone in 2025, as opposed to 66 percent in 2005. *See* Pew Research Ctr., *Mobile Fact Sheet* (Nov. 13, 2024), https://www.pewresearch.org/internet/fact-sheet/mobile/ (on file with the Colorado Attorney General's Office).

Cell phone numbers are easier than ever to obtain as an entire industry has been built on the purchase and sale of individual personal data. *See, e.g.*, Duke Sanford Cyber Policy Program, *Response from Duke University's Data Brokerage Research Project Federal Trade Commission (FTC) Rule on Commercial Surveillance and Data Security* (Oct. 2022), https://coag.gov/app/uploads/2025/08/Resp onse-to-FTC-RFC-Duke-Data-Brokerage-2022.pdf.

Further, the potential harms that may result from unauthorized disclosure of an individual's cell phone number are well established and are not speculative. The unwanted disclosure of a cell phone number leaves an individual more vulnerable to fraud than disclosure of most other pieces of personal information. The Federal Communications Commission warns that a "mobile phone number may be the key to [an individual's] most important financial accounts" and that scammers can swap an individual's SIM card to intercept two-factor authentication codes sent to their phone to access financial and other accounts. *See* FCC, *Cell Phone Fraud*, https://www.fcc.gov/cell-phone-fraud (last visited Oct. 26, 2025); Am. Bankers Ass'n, *SIM Swapping Scams*, https://www.aba.com/advocacy/community-programs/consumer-resources/protect-your-money/sim-swapping-scams (last visited Oct. 26, 2025) (both on file with the Colorado Attorney General's Office). Also, disclosure of cell phone numbers fuels more traditional forms of fraud like robocalls and phishing scams. Mobile phishing scams can be especially effective because they leverage the sense of urgency commonly associated with text messages, and users typically trust text messages more than other communication methods. *See, e.g.*, Colo. Governor's Office of Info. Tech., *Have You Been Smished?*, https://oit.colorado.gov/blog-post/have-you-been-smished (last visited Oct. 26, 2025) (on file with the Colorado Attorney General's Office).

The disclosure of a personal cell phone number can also enable severe, sometimes criminal behaviors like doxing, stalking, and harassment. In one example, a

planner of Jewish weddings had her cell phone number and other personal information published on a neo-Nazi website, which led to death threats that caused panic attacks and other health issues. *See* Batuhan Kukul, *Personal data and personal safety: re-examining the limits of public data in the context of doxing*, 13 Int'l Data Priv. L. No. 3, 2023, https://coag.gov/app/uploads/2025/08/Personal-data-and-personal-safety.pdf. In another case, a woman changed her phone number to avoid contact with a man she met online, only to have her new number disclosed to him by Verizon. He escalated his harassment, contacting her family and coworkers and threatening her safety. (He was ultimately arrested.) Brian Gordon & Virginia Bridges, *Lawsuit blames Verizon for accused stalker showing up in Wake County with knife, rope*, The News & Observer (April 11, 2025), https://www.newsobserver.com/news/local/crime/article291166080.html (on file with the Colorado Attorney General's Office). Judges and other public officials and their families have also been targeted, threatened, and harassed in recent years after attackers obtained their personal contact information from internet directories. *See, e.g.*, Brief of Amici Curiae State of Ohio, 40 Other States, and the District of Columbia Supporting Appellees, 6-11, *Atlas Data Privacy Corp., et al v. We Inform LLC, et al.*, No. 25-1555 (3rd Cir. 2025). While federal and state laws protect some domestic violence victims, judges, and other public officials from the unwanted disclosure of their personal information, the protections do not extend to all individuals.

To combat these potential harms and protect their citizens, Colorado and other states have passed laws protecting cell phone numbers from unwanted distribution. *See, e.g.*, C.R.S. §§ 6-1-301 to -305 (PTFA); C.R.S. §§ 6-1-1301 to -1314 (Colorado Privacy Act, granting individuals the right to delete and correct their data, consent to the use of sensitive data, and prohibit the sale or use of their data for targeted advertising); Ga. Code Ann. § 46-5-28; Tex. Util. Code Ann. § 64.202; Wash. Rev. Code § 19.250.020. Additionally, states and the federal government have passed a host of laws designed to

give individuals greater control over their personal data, combat fraud, and protect privacy. *See, e.g.*, C.R.S. §§ 6-1-901 to -908 (Colorado NO-Call List Act); Cal. Civ. Code § 1798.99.86(d)(1) (California Delete Act, giving individuals the right to make a single request for all registered data brokers to delete their data); Wash. Rev. Code § 19.373.030 (Washington My Health My Data Act, requiring consent or necessity to collect consumer health data); 47 U.S.C. 227 (Telephone Consumer Protection Act, prohibiting use of automatic telephone dialing systems to make calls without prior consent); 18 U.S.C. 2721 (Drivers Privacy Protection Act, prohibiting disclosure of personal information in motor vehicle records except under specified circumstances); *see, also*, Int'l Ass'n Priv. Pros., *State Privacy Legislation Tracker*, (last updated July 7, 2025), https://iapp.org/resources/article/us-state-privacy-legislation-tracker/ (on file with the Colorado Attorney General's office). These regulatory efforts, aimed at giving individuals control over their personal information, accord with the Supreme Court's long-standing recognition that "both the common law and the literal understandings of privacy encompass the individual's control of information concerning his or her person." *U.S. Dep't of Just. v. Reps. Comm. For Freedom of the Press*, 489 U.S. 749, 763 (1989). Colorado's interests here are undoubtedly substantial.

b) Section 304(4)(a)(I) furthers Colorado's interests and is no more restrictive than necessary.

The PTFA, including section 304(4)(a)(I), directly advances Colorado's substantial interests in protecting individual privacy and preventing fraud and does not burden substantially more speech than necessary to accomplish those goals.

A statute directly advances the government's interest if the state can "demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173, 188 (1999) (citation omitted). States can make such a demonstration using "studies and

anecdotes pertaining to different locales" as well as "history, consensus, and 'simple common sense.'" *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001) (quoting *Fla. Bar*, 515 U.S. at 628). Courts should be "loath to second-guess the Government's judgment" as to how to tailor regulation to further state interests. *Fox*, 492 U.S. at 478.

The General Assembly enacted the PTFA in 1993 in response to the rapid growth of commercial telephone solicitation and its attendant risks. The General Assembly found that such solicitation "entails special risks and poses the potential for abuse." C.R.S. § 6-1-301. Further,

> the widespread practice of fraudulent and deceptive commercial telephone solicitation has caused substantial financial losses to thousands of consumers, and, particularly, elderly, homebound, and otherwise vulnerable consumers, and is a matter vitally affecting the public interest; and, therefore, that the general welfare of the public and the protection of the integrity of the telemarketing industry requires statutory regulation of the commercial use of telephones.

C.R.S. § 6-1-301. In 2005 the legislature amended the PTFA to add section 304(4)(a)(I). More recently, the General Assembly passed the Colorado Privacy Act, which explained that "fundamental privacy rights have long been, and continue to be, integral to protecting Coloradans and to safeguarding our democratic republic" and that "the unauthorized disclosure of personal information and loss of privacy can have devastating impacts ranging from financial fraud, identity theft, and unnecessary costs in personal time and finances to destruction of property, harassment, reputational damage, emotional distress, and physical harm." C.R.S. § 6-1-1302(1)(a)(II), (V).

Understandably, many individuals would like to remove their personal information from websites, but they often encounter numerous problems when attempting to do so. *See, e.g.*, Kejsi Take et al., *What to Expect When You're Accessing: An Exploration of User Privacy Rights in People Search Websites* (2024), https://coag.gov/app/uploads/

2025/08/What-to-Expect-When-Youre-Accessing.pdf; Yael Grauer et al., *Evaluating People-Search Site Removal Services* (Aug. 8, 2024), https://coag.gov/app/uploads/2025/08/Evaluating-People-Search-Site-Removal-Services.pdf. Indeed, the Colorado Attorney General and amici states regularly receive complaints from residents regarding websites that publish personal information and their inability to remove their information from them. Given the well-reported harm that can result from the unauthorized publication of personal information and the difficulty of removing information from the public domain once disclosed, section 304(4)(a)(I) advances Colorado's interest in safeguarding individual privacy by giving individuals direct control over their information.

The subsection also advances Colorado's interest in protecting individuals and their privacy because the law is not an outright prohibition—if individuals consent to the publication of their cell phone number, a person may list it in a directory for a commercial purpose. C.R.S. § 6-1-304(4)(a)(I). Courts routinely defer to legislative judgments of how best to advance important state interests, especially when those legislative enactments are short of outright bans on speech. *See, e.g.*, *Free Speech Coal., Inc. v. Paxton*, 145 S. Ct. 2291, 2317 (2025) (age verification requirement for material obscene to minors was adequately tailored, surviving intermediate scrutiny); *Nat'l Cable & Telecomms. Ass'n v. FCC*, 555 F.3d 996, 1002 (D.C. Cir. 2009) (FCC requirement of opt-in consent for disclosure of customer information directly and materially advanced the Commission's interest); *Boelter v. Hearst Commc'ns, Inc.*, 192 F. Supp. 3d 427, 449 (S.D.N.Y. 2016) (state video rental privacy statute allowing for disclosure of information only with consent or under certain other circumstances was a sufficiently tailored "measured restriction" on information sharing); *ACA Connects - Am.'s Commc'ns Ass'n v. Frey*, 471 F. Supp. 3d 318, 328 (D. Me. 2020) (consent requirement for internet service providers to disclose consumer information might be, pending further discovery, sufficiently tailored so as to survive intermediate scrutiny); *cf. DoorDash, Inc. v. City of New York*, No. 21 CIV. 10347

(AT), 2025 WL 1827699, at *14 (S.D.N.Y. June 30, 2025) (finding that a statute compelling disclosure of commercial data failed intermediate scrutiny and explaining that "[l]ess restrictive alternatives to promote the same goal" including requiring businesses to offer "an opt-in program for customers to send their data").

Second 304(4)(a)(I) also does not burden substantially more speech than necessary. Importantly, under the intermediate scrutiny standard, "a regulation need not be the least speech-restrictive means of advancing the [g]overnment's interests." *TikTok*, 604 U.S. at 76. *See, also*, *Ward v. Rock Against Racism*, 491 U.S. 781, 800 (1989) (A "regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative."). Courts assessing whether a restriction burdens substantially more speech than necessary should afford the government "'latitude' . . . to design regulatory solutions to address content-neutral interests." *Id.* at 77. States undoubtedly have authority to regulate the commercial use of telephone numbers. *See Mainstream Mktg.*, 358 F.3d at 1242 (concluding that do-not-call registry is constitutional). Colorado similarly has authority to prohibit the nonconsensual publication and sale of private cell phone numbers for a commercial purpose.

A ruling from this Court striking down section 304(4)(a)(I) would disregard settled law regarding the interplay between the First Amendment and data privacy protections. Courts have repeatedly upheld reasonable, generally applicable restrictions on disclosing private personal information like those in the PTFA. *See, e.g., ACA Connects*, 471 F.Supp.3d (Maine law regulating ISP disclosure of consumer information, upheld in the context of a motion for judgment on the pleadings); *ACLU v. Clearview AI, Inc.*, No. 20 CH 4353, 2021 WL 4164452 (Ill. Cir. Ct. Aug. 27, 2021) (Illinois biometric privacy law); *Boelter*, 192 F.Supp.3d at 451 (Michigan Video Rental Privacy Act); *King*, 903 F.Supp.2d at 312 (E.D. Pa. 2012) (federal Fair Credit Reporting Act). In upholding these laws, courts

have carefully identified the individual privacy interests at play, balanced those interests with the value, if any, of speech that may be suppressed, and decided that the legislative schemes that states and Congress have enacted reasonably fit the state's interest. *See Fox*, 492 U.S. at 481.

D. Section 304(4)(a)(I) is not unconstitutionally vague.

Section 304(4)(a)(I) is also not unconstitutionally vague. A statute is only unconstitutionally vague if it fails to give a "person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Mathematical certainty is not required; the statute must provide only "relatively clear guidelines as to prohibited conduct." *Posters 'N' Things, Ltd. v. United States*, 511 U.S. 513, 525 (1994). The same standard applies to statutes that restrict expressive activity. *See Ward*, 491 U.S. at 794 ("[P]erfect clarity and precise guidance have never been required even of regulations that restrict expressive activity.").

Defendants claim that the missing definitions for "list" (and "listing"), "directory," and "for a commercial purpose" make section 304(4)(a)(I) "next-to-impossible for persons or entities to know what is required." ECF 69 at 16. The provision at issue states that a person violates the statute if they knowingly "[l]ist[] a cellular telephone number in a directory for a commercial purpose[.]" C.R.S. § 6-1-304(4)(a)(I). This sentence "intelligibly forbids a definite course of conduct[.]" *United States v. Powell*, 423 U.S. 87, 93 (1975). A person of ordinary intelligence would understand that the statute is clearly aimed at regulating the conduct of businesses that list cellular telephone numbers in online directories for commercial purposes. *See Minority Tele. Project Inc. v. FCC*, 649 F. Supp. 2d 1025, 1046 (N.D. Cal. 2009) (denying a void-for-vagueness challenge to a provision of California law prohibiting "any paid message intended to promote any service, facility, or product offered by any person who is engaged in such offering for profit" because the "general concept of promoting a product or service is one that is easily grasped by a

person of ordinary intelligence" (internal quotations omitted)). The statute makes clear what types of conduct are prohibited and is not unconstitutionally vague.

IV. CONCLUSION

The Court should reject Defendant's challenge to the constitutionality of section 304(4)(a)(I).

DATED this 16th day of January, 2025.

PHILIP J. WEISER
Attorney General
State of Colorado

For the Attorney General:

/s/ Noah Hoffman

Noah Hoffman
Assistant Attorney General Fellow
Brady Grassmeyer
Senior Assistant Attorney General
Ralph L. Carr Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203
720-508-6263
Noah.Hoffman@coag.gov
Brady.grassmeyer@coag.gov

KATHLEEN JENNINGS
Attorney General
State of Delaware
820 N. French St.
Wilmington, DE 19801

KWAME RAOUL
Attorney General
State of Illinois
500 South Second Street
Springfield, IL 62701

THEODORE E. ROKITA
Attorney General
State of Indiana
302 W. Washington Street
IGCS-5TH Floor
Indianapolis, IN 46204

AARON M. FREY
Attorney General for the State of Maine
6 State House Station
Augusta, Maine 04333

ANTHONY G. BROWN
Attorney General
State of Maryland
200 Saint Paul Pl.
Baltimore, MD 21202

DANA NESSEL
Michigan Attorney General
P.O. Box 30212
Lansing, Michigan 48909

KEITH ELLISON
Attorney General
State of Minnesota
102 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

MICHAEL T. HILGERS
Attorney General
State of Nebraska
1445 K Street
Lincoln, NE 68508

AARON D. FORD
Attorney General of Nevada
100 North Carson Street
Carson City, NV 89701

RAUL TORREZ
New Mexico Attorney General
New Mexico Department of Justice
408 Galisteo Street
Santa Fe, NM 87501

JEFF JACKSON
North Carolina Attorney General
114 W. Edenton Street
Raleigh, NC 27603

DREW H. WRIGLEY
Attorney General
State of North Dakota
600 East Boulevard Avenue,
Bismarck, ND 58505

PETER F. NERONHA
Attorney General
State of Rhode Island
150 South Main Street
Providence, RI 02903

MARTY J. JACKLEY
Attorney General
State of South Dakota
1302 East Highway 1889, Suite 1
Pierre, SD 5750

BRIAN L. SCHWALB
Attorney General for
the District of Columbia
400 6th Street NW
Washington, D.C. 20001

Certificate of Compliance

This proposed amicus brief complies with D.C.COLO.LPtR 17 and contains 4628 words.