

No. 25-5660

**In the United States Court of Appeals
for the Sixth Circuit**

NETCHOICE, LLC,

Plaintiff-Appellant,

v.

JONATHAN SKRMETTI,

Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Tennessee at Nashville
Case No. 3:24-cv-01191

**BRIEF OF *AMICI CURIAE* FLORIDA, 34 STATES, AND THE
DISTRICT OF COLUMBIA IN SUPPORT OF APPELLEE
AND AFFIRMANCE**

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INTRODUCTION AND INTEREST OF AMICI

The public has learned—through whistleblowers and leaked internal documents—what social-media platforms have known for years: Their design features are destroying children’s mental health. There is a “clear link” between compulsive social-media use and our kids’ skyrocketing rates of depression, anxiety, self-harm, and suicide.¹ In the words of the Biden Administration’s Surgeon General, “[o]ur children have become unknowing participants in a decades-long experiment.”²

States and the federal government have come together to take swift, bipartisan action. Many States—including Tennessee and several *Amici*—have passed laws regulating social-media platforms’ transactions with vulnerable children, and more than 40 States have sued platforms for the harm they have caused children.³ Several CEOs were recently subjected to “a bipartisan thrashing” in the Senate Judiciary Committee, at which Mark Zuckerberg famously apologized to parents whose children had been harmed by Meta platforms.⁴

¹ Decl. of Jean M. Twenge, Ph.D. ¶¶ 6, 59, *CCLA v. Uthmeier*, No. 4:24-cv-438 (N.D. Fla. Jan. 12, 2025), ECF No. 51-1.

² Off. of the Surgeon Gen., *Social Media and Youth Mental Health: The U.S. Surgeon General’s Advisory* 11 (2023), <https://tinyurl.com/33u2t7kn>.

³ Bobby Allyn, *States Sue Meta, Claiming Instagram, Facebook Fueled Youth Mental Health Crisis*, NPR (Oct. 24, 2023), <https://tinyurl.com/y882nt5f>.

⁴ Kalhan Rosenblatt et al., *Senate Hearing Highlights: Lawmakers Grill CEOs from TikTok, X and Meta About Online Child Safety*, NBC News (Jan. 31, 2024), <https://tinyurl.com/2p9vvy62>.

Rather than scale back their predatory business practices—which range from confusing account-holder contracts to design features that manipulate kids into compulsively using social media—tech companies have doubled down on their nothing-to-see-here approach. They refuse “access to [their] data,” “bury evidence” of the harm they are inflicting on children, and battle regulation at every turn.⁵ The reason is clear: Addicting children and destroying their mental health pays. Platforms rake in “\$11 billion” a year from ads directed at children, including “nearly \$2 billion in ad profits derived from users age 12 and under.”⁶

Platforms have enlisted their trade association, NetChoice, to fight all efforts to regulate their business practices and protect kids online. According to NetChoice, the Constitution gives tech giants like Google and Meta a veto for any law that regulates their practices simply because their platforms host speech. The First Amendment, they say, grants platforms not just a right to speak but also a right to contract with children,

⁵ Surgeon General Advisory, *supra* n.2 at 11 (first quote); *Hidden Harms: Examining Whistleblower Allegations that Meta Buried Child Safety Research Before the Subcomm. on Priv., Tech., and the L. of the S. Comm. on the Judiciary*, 119th Cong. 1 (2025) (written statement of Jason Sattizahn), <https://tinyurl.com/37jmj2a8> (second quote); *see also* Shannon Bond & Bobby Allyn, *Whistleblower Tells Congress that Facebook Products Harm Kids and Democracy*, NPR (October 5, 2021), <https://tinyurl.com/yc4zex93> (Meta whistleblower exposing that “Facebook executives hide research about the social network’s risks to keep its business humming”).

⁶ *See Hidden Harms: Examining Whistleblower Allegations that Meta Buried Child Safety Research Before the Subcomm. on Priv., Tech., and the L. of the S. Comm. on the Judiciary*, 119th Cong. 18:43–19:04 (2025) (statement of Sen. Amy Klobuchar), <https://tinyurl.com/y5wtez98>.

exploit their developing brains with addictive design features, expose them to sexual predators, and drive them to self-harm and suicide—all while misleading the public about their products.

Amici have an interest in resisting NetChoice’s attempt to distort the First Amendment into an absolute regulatory immunity for internet platforms. The First Amendment is not a shield for platforms’ harmful business practices.

The district court rightly denied NetChoice a preliminary injunction barring enforcement of Tennessee’s Protecting Children from Social Media Act. NetChoice claims that it “established . . . irreparable injury because it is likely to succeed on the merits of its” First Amendment challenge. Init. Br. 48. But even if a likely First Amendment violation establishes irreparable injury, *but see NetChoice v. Fitch*, 145 S. Ct. 2658 (2025) (Kavanaugh, J., concurring in denial of application to vacate stay), NetChoice is not entitled to a preliminary injunction because the Act is a reasonable, constitutionally valid response to the harm that platforms are causing children. The Act zeroes in on commercial activity, regulating only contracting with children “to create an account.” Tenn. Code Ann. § 47-18-5702(9)(A)(i); *id.* § 47-18-5703(a)(2)(A). It in no way threatens to “drive certain ideas or viewpoints from the marketplace.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 387 (1992) (quotation omitted). If two social-media platforms were identical in all respects except that one required users to become account holders and the other did not, the Act would impose no restrictions on the latter even though both platforms provide the same speech to children. That makes the Act “different in kind

from the regulations of non-expressive activity that [the Supreme Court] ha[s] subjected to First Amendment scrutiny.” *TikTok v. Garland*, 604 U.S. 56, 69 (2025).

Even if the Act triggers First Amendment scrutiny, NetChoice is still wrong that it established a likelihood of success on the merits because the Act plainly has a broad sweep of valid applications. The Act can be validly enforced against covered platforms when they provide accounts to children of “tender years.” *Prince v. Massachusetts*, 321 U.S. 158, 169–70 (1944). States have the power to protect young children—who have more limited First Amendment interests than older children—from the harms posed by social media.

ARGUMENT

I. STATES HAVE A COMPELLING INTEREST IN PROTECTING CHILDREN FROM SOCIAL-MEDIA COMPANIES’ PREDATORY BUSINESS PRACTICES.

A. Social-media companies are misleading the public and harming children.

In recent years, mounting evidence has emerged that social-media platforms are knowingly harming children. As child social-media use proliferated over the last 15 years, adolescent depression rates more than doubled,⁷ and children experienced a rise in anxiety, low self-esteem, poor body image, and eating disorders.⁸ Associated

⁷ Twenge Decl., *supra* n.1 ¶ 15.

⁸ Surgeon General Advisory, *supra* n.2 at 6–7; *see also* Twenge Decl., *supra* n.1 ¶ 59.

behaviors like self-harm and suicide also “skyrocketed.”⁹ “Between 2010 and 2022, emergency room admissions for self-harm increased 192% among 15- to 19-year-old girls” and “an incredible 411% among 10- to 14-year-old girls.”¹⁰ “The suicide rate among 10- to 14-year-old boys increased 166%,” and “the suicide rate among 10- to 14-year-old girls increased 217%.”¹¹ But for those spikes in youth suicide, “3,604 more” sons and daughters “would be alive today.”¹²

Studies reveal that the correlation is no coincidence: Social media is a causal factor.¹³ Children who spend at least 3 hours a day on social media double their likelihood of developing anxiety and depression.¹⁴

The harm does not stop there. Children are being victimized by “predatory behaviors”—including “sexual solicitation”—on platforms.¹⁵ More than 25% of girls between ages 13 and 15 have “receiv[ed] unwanted sexual advances on Instagram,” for example.¹⁶ And Senators Richard Blumenthal and Marsha Blackburn recently wrote to

⁹ Twenge Decl., *supra* n.1 ¶¶ 17–18.

¹⁰ *Id.* ¶ 17.

¹¹ *Id.* ¶ 18.

¹² *Id.*

¹³ *Id.* ¶¶ 34, 47; Decl. of Dr. Kristopher Kaliebe ¶¶ 29–32, R.28, PageID#228.

¹⁴ Twenge Decl., *supra* n.1 ¶¶ 39, 47; Surgeon General Advisory, *supra* n.2 at 6.

¹⁵ Surgeon General Advisory, *supra* n.2 at 9; Twenge Decl., *supra* n.1 ¶ 22.

¹⁶ Brian Fung, *Execs Ignored the Damage Instagram Does to Teens, Meta Whistleblower Tells Congress*, CNN Business (Nov. 7, 2023), <https://tinyurl.com/ak3d34p9>.

Meta after “reports that Instagram has harbored an open-air market for the sale of child sexual abuse material and the trafficking of children.”¹⁷ The problem is so bad that Meta and Snap actively warn children of the dangers of “sextortion” on their platforms.¹⁸

Platforms also market dangerous “challenges” to children, like “ten-year-old Nylah Anderson.” *Anderson v. TikTok*, 116 F.4th 180, 181 (3d Cir. 2024). TikTok, “via its algorithm, recommended and promoted” to Nylah a video that “depicted the ‘Blackout Challenge,’ which encourages viewers to record themselves engaging in acts of self-asphyxiation.” *Id.* “After watching the video, Nylah attempted the conduct depicted in the challenge and unintentionally hanged herself.” *Id.* Her mother found her “lifeless body on the bedroom floor” and “rushed” her “to the hospital,” where she died.¹⁹

Still, platforms have resisted any effort to research or mitigate their products’ effects. As the U.S. Surgeon General has explained, researching the danger that platforms’ practices pose to children is difficult because platforms do not allow “access to data” and insist on a “lack of transparency.”²⁰ Or as a whistleblower testified to the Senate Judiciary Committee just weeks ago, platforms “manipulate, control, and erase

¹⁷ Letter from Senators Richard Blumenthal and Marsha Blackburn to Mark Zuckerberg, June 21, 2023, <https://tinyurl.com/2s4j243y>.

¹⁸ *Five Ways to Respond to Sextortion*, Meta (Aug. 20, 2025), <https://tinyurl.com/292hmv44>; *What You Need to Know About Financial Sextortion*, Snap (Aug. 20, 2025), <https://tinyurl.com/4vwn9f39>.

¹⁹ Justin Rohrlich, *A 10-year-old girl died during the viral ‘blackout challenge.’ Now TikTok could be held liable*, The Independent (Aug. 28, 2024), <https://tinyurl.com/yw3ebwj2>.

²⁰ Surgeon General Advisory, *supra* n.2 at 11.

data” that documents the harm their products are causing.²¹ Only because of whistle-blowers and accidental leaks do Americans know that platforms have long been aware of the harm they are inflicting on children.

Meta, which operates Facebook and Instagram, is a prime example. A whistle-blower exposed internal research showing that many of Instagram’s youngest users “felt addicted to the app,” “lacked the wherewithal to limit their use of it,” and reported “that the app contributed to their depression and anxiety.”²² Meta also acknowledged—internally—that Instagram was causing nearly one third of adolescent-girl users to develop body-image issues.²³ Rather than roll back the features it was privately acknowledging are addictive and destructive, Meta pressed on and even sought to expand its products to younger children. The company “commissioned strategy papers about the long-term business opportunities” with preteens and discussed “whether there might be a way to engage children during play dates.”²⁴ Delivering its products to more

²¹ *Hidden Harms: Examining Whistleblower Allegations that Meta Buried Child Safety Research Before the Subcomm. on Priv., Tech., and the L. of the S. Comm. on the Judiciary*, 119th Cong. 3 (2025) (written statement of Jason Sattizahn), <https://tinyurl.com/37jmj2a8>.

²² Sue Halpern, *Instagram for Kids and What Facebook Knows About the Effects of Social Media*, *The New Yorker* (Sept. 30, 2021), <https://tinyurl.com/y3vrehyh>.

²³ *Id.*

²⁴ *Id.*

“tweens,” Meta explained in internal meetings, was imperative because “[t]hey are a valuable but untapped audience.”²⁵

Leaked documents from TikTok showed that it too “was aware its many features designed to keep young people on the app led to a constant and irresistible urge to keep opening the app” and that such “compulsive usage correlates with a slew of negative mental health effects like loss of analytical skills, memory formation, contextual thinking, conversational depth, empathy, and increased anxiety.”²⁶ TikTok acknowledged that features like infinite scroll were most likely to addict children, stating that “across most engagement metrics, the younger the user, the better the performance” because “[m]inors do not have executive function to control their screen time.”²⁷ And although TikTok has publicly touted some features ostensibly aimed at reducing the platform’s addictive effects—like allowing parents to set time limits and prompting users to take a break—TikTok determined that those features “had little impact” and are “not altogether effective.”²⁸ But that did not matter because TikTok adopted the features solely to give it “a good talking point with policymakers.”²⁹

²⁵ *Id.*

²⁶ Bobby Allyn et al., *TikTok Executives Know About App’s Effect on Teens, Lawsuit Documents Allege*, NPR (Oct. 11, 2024), <https://tinyurl.com/4e5un4ru>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *See id.*

B. Regulation is needed to protect the next generation of children.

Because deceptive practices like Meta’s and TikTok’s have fueled the Nation’s “youth mental health crisis,”³⁰ the U.S. Surgeon General has called on policymakers to develop “health and safety standards” for platforms and to adopt “policies that further limit access . . . to social media for all children”—including “strengthening and enforcing age minimums.”³¹

Those policy responses are necessary because platforms’ own interventions have proven inadequate. Platforms have long had parental controls, but they have made no dent in child addiction.³² That is both because parents do not use them and because they are ineffective. Less than 1% of parents use Snapchat’s controls, for example.³³ And parental controls are difficult to manage³⁴; they do not address the features that make platforms addictive³⁵; and platforms do not implement them with fidelity. *See* Fed.

³⁰ Surgeon General Advisory, *supra* n.2 at 13; *accord* Twenge Decl., *supra* n.1 ¶ 26.

³¹ Surgeon General Advisory, *supra* n.2 at 15.

³² Dep. of Adam Alter, Ph.D. at 183:16–23, *CCLA v. Uthmeier*, No. 4:24-cv-438 (N.D. Fla. Jan. 23, 2025), ECF No. 63-3.

³³ *See* Response to Questions for the Record from Evan Spiegel, Snap Co-Founder & CEO, to Senate Judiciary Comm. at 1–2 (Feb. 28, 2024), <https://tinyurl.com/55amwdfc>.

³⁴ Decl. of Tony Allen ¶¶ 51–61, *CCLA v. Uthmeier*, No. 4:24-cv-438 (N.D. Fla. Jan. 9, 2025), ECF No. 51-3; *accord* Decl. of Dr. Kristopher Kaliebe ¶¶ 38, 166–170, R.28, PageID#229, 255–56.

³⁵ Decl. of Adam Alter, Ph.D. ¶¶ 48–50, *CCLA v. Uthmeier*, No. 4:24-cv-438 (N.D. Fla. Jan. 13, 2025), ECF No. 51-2.

Trade Comm’n, *A Look Behind the Screens*, 2024 WL 4272104, at *9 (Sept. 1, 2024) (Facebook has “misled parents about their ability to control” their children’s accounts).

Tennessee and other States have therefore passed laws that regulate platforms’ harmful commercial activity.³⁶ States and the federal government have a compelling interest in regulating platforms’ business practices given their undeniable role in the Nation’s youth mental-health crisis. *See Moody v. NetChoice*, 603 U.S. 707, 733 (2024) (acknowledging that social media poses unique “dangers” to kids’ “mental health”); *Sable Commc’ns of Cal. v. FCC*, 492 U.S. 115, 126 (1989) (States have a “compelling interest in protecting the physical and psychological well-being of minors.”). NetChoice cannot seriously dispute that when much of the evidence stems from its own members’ leaks. Indeed, in one of its challenges to a State law protecting children, NetChoice tried to dispute the harm that social-media companies are causing, but it had to withdraw its expert report after the State defendant moved to strike the report because it relied on nonexistent studies fabricated by artificial intelligence.³⁷

³⁶ *See, e.g.*, Ohio Rev. Code § 1349.09(B)(1) (limits on social-media platforms contracting with children); Miss. Code Ann. § 45-38-7 (same); Fla. Stat. § 501.1736 (regulating platforms’ use of “addictive features”); N.Y. Gen. Bus. Law § 1501-1502 (limits on “addictive feeds” and push “notifications”); Cal. Civ. Code § 1798.99.31(b)(7) (limits on targeting children with deceptive practices); Del. Code Ann. tit. 6, § 1204C (limits on advertising to children); La. Stat. Ann. § 51:1753(2) (same).

³⁷ *See* Memo. in Support of Mot. to Exclude at 1–2, *NetChoice v. Murrill*, No. 3:25-cv-231 (M.D. La. Aug. 15, 2025), ECF No. 42-1; Jacqueline Thomsen, *NetChoice Pulls Expert After Allegations of AI Fabrications*, Bloomberg Law (Aug. 17, 2025), <https://tinyurl.com/2nk64wss>.

II. THE PROTECTING CHILDREN FROM SOCIAL MEDIA ACT IS A REASONABLE, CONSTITUTIONALLY VALID RESPONSE TO SOCIAL-MEDIA COMPANIES’ PREDATORY BUSINESS PRACTICES.

A. The Act does not trigger heightened scrutiny.

The Act is a quintessential consumer-protection law: It protects Tennessee’s most vulnerable citizens from predatory business practices. It does not trigger heightened scrutiny because it regulates only commercial activity with children, not speech. The Act limits social-media platforms’ ability to enter account-holder contracts with children, who “lack[]” the “reason and judgment” to weigh the risks and benefits of the contracts. *NRA v. Bondi*, 133 F.4th 1108, 1117 (11th Cir. 2025) (en banc).

That restriction is a valid exercise of the State’s police power. First Amendment scrutiny applies only if a law either “directly regulates protected expressive activity” or regulates non-expressive activity but “impose[s] a disproportionate burden upon” “First Amendment activities.” *TikTok*, 604 U.S. at 68; *Arcara v. Cloud Books*, 478 U.S. 697, 704 (1986). The Act does neither. It directly regulates commercial activity without “singl[ing] out” any expression. *Arcara*, 478 U.S. at 705.

1. There is no disputing that the Act does not directly regulate expression. It prevents covered platforms only from entering agreements with a child “to become an account holder” without parental consent. Tenn. Code Ann. § 47-18-5703(a)(1). Becoming an account holder is not itself speech—it is a commercial transaction.

Social-media platforms require account holders to enter complex contracts that shield the platforms from liability, allow the platforms to profit from users’ online

activity, and guarantee the platforms access to vast amounts of users’ sensitive personal data. Snap, for instance, requires account holders—including children—to “form a legally binding contract” with it.³⁸ That contract requires children to (1) authorize Snap to “collect” and “obtain” personal information “about [them],”³⁹ including their “activity” on other “websites and platforms,” data stored on their mobile “device,” and their “location information”⁴⁰; (2) “grant Snap and [its] affiliates a worldwide, royalty-free, sublicensable, and transferable license to host, store, cache, use, display, reproduce, modify, adapt, edit, publish, analyze, transmit, and distribute [their content], including the name, image, likeness, or voice of anyone featured in it”⁴¹; (3) acknowledge that they “may be exposed to content that might be offensive, illegal, misleading, or otherwise inappropriate” and release Snap from all warranties and liability “to the extent permitted by law”⁴²; (4) limit Snap’s “aggregate liability” to “the greater of \$100 USD or the amount [the user] [has] paid” Snap in the past twelve months⁴³; (5) submit any

³⁸ *Snap Inc. Terms of Service*, Snap (Apr. 7, 2025), <https://www.snap.com/terms>.

³⁹ *Id.*

⁴⁰ *Snapchat Ads Transparency*, Snap (Oct. 10, 2025), <https://values.snap.com/privacy/ads-privacy>.

⁴¹ *Snap Inc. Terms of Service*, Snap (Apr. 7, 2025), <https://www.snap.com/terms>.

⁴² *Id.*

⁴³ *Id.*

disputes to “binding individual arbitration” and waive all rights to participate in a “class action” or “jury trial”⁴⁴; and (6) “consent to . . . personal jurisdiction” in Los Angeles.⁴⁵

That contractual transaction, not speech, is all the Act directly regulates. *See 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 499 (1996) (distinguishing between “the State’s power to regulate commercial transactions” and speech). The Tennessee Legislature determined that children lack the capacity to weigh the risks and benefits necessary to decide for themselves whether to “enter into a contract” that subjects them to platforms’ sweeping “terms of service” and predatory data-collection practices. Decl. of Matthew D. Janssen ¶¶ 16–26, R.31, PageID#869–74 (detailing Tennessee’s concerns about platforms contracting with children). That is a regulation of commercial activity, not speech. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 634 (1984) (O’Connor, J., concurring in part and in the judgment) (“[T]he State is free to impose any rational regulation on the commercial transaction itself.”).

Contracts have been subject to State regulation—and even prohibition when deemed against public policy—throughout United States history. *See Ogden v. Saunders*, 25 U.S. 213, 347 (1827) (Marshall, C.J., dissenting) (“The [State’s] right to regulate contracts, to prescribe rules by which they shall be evidenced, to prohibit such as may be deemed mischievous, is unquestionable, and has been universally exercised.”).

⁴⁴ *Id.*

⁴⁵ *Id.*

Corporations have never had a right to enter a “contract which the laws of th[e] community forbid, and the validity and effect of their contracts is what the existing laws give to them.” *Id.* at 283 (opinion of Johnson, J.). That is especially true of contracts involving children, which have been heavily regulated and proscribed for centuries. *See* Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* 264–71 (2005).

Because the Act directly regulates only providing children accounts, this case is different from *Packingham v. North Carolina*, 582 U.S. 98 (2017) . *See* Init. Br. 50 (arguing that “at minimum,” intermediate scrutiny applies under *Packingham*). There, the Supreme Court applied heightened scrutiny to a law that made it a crime for a sex offender “to access” a social-media platform. *Packingham*, 582 U.S. at 101. Unlike the Act, that law was a direct regulation of speech—it made it a felony for a sex offender to post or read posts on social media. The Act does nothing of the sort. It does not directly regulate children at all, let alone what they may say or read on the internet. All the law does is limit platforms’ ability to contract with them without parental consent. Platforms may prefer requiring children to enter complex account-holder contracts as a condition of access so they can collect their data and maximize revenue, but the Free Speech Clause does not protect that preferred business model.

2. Nor does the Act’s regulation of commercial activity impose a “disproportionate burden upon” expression. *TikTok*, 604 U.S. at 68 (quoting *Arara*, 478 U.S. at 704). It at most only “incidental[ly] burdens” speech. *Sorrell v. IMS Health*, 564 U.S. 552, 566–

67 (2011) (heightened scrutiny applies to laws regulating commercial activity if their “purpose” is to “suppress speech”); *Lichtenstein v. Hargett*, 83 F.4th 575, 583 (6th Cir. 2023) (holding that heightened scrutiny did not apply to a “conduct” regulation because it did not “target” speech); *see also Indigo Room v. City of Fort Myers*, 710 F.3d 1294, 1299–1300 (11th Cir. 2013); *Gary v. City of Warner Robins*, 311 F.3d 1334, 1340 (11th Cir. 2002). Any burden on speech results solely from a platform’s business decision to force children to become account holders to use the platform’s product.

Although the Supreme Court “has not articulated a clear framework for determining whether a regulation of non-expressive activity . . . disproportionately burdens” expression, it has identified some relevant factors. *TikTok*, 604 U.S. at 69. It matters whether the law’s “focus” is preventing expression and whether there are “causal steps between the [law] and the alleged burden on protected speech.” *See id.* If a law’s focus is unrelated to expression, and any burden on speech arises only if other events occur—such as a business choosing to engage in “unlawful conduct”—then the law is not “directed at” expression and does not trigger heightened scrutiny. *Arara*, 478 U.S. at 707; *TikTok*, 604 U.S. at 67–68.

TikTok and the Eleventh Circuit’s decisions in *Indigo Room* and *Gary* are illustrative. In *TikTok*, TikTok and some of its users challenged a federal statute that required TikTok to either divest U.S. operations from Chinese control or effectively cease operating in the U.S. 604 U.S. at 62. Although the Court ultimately did not decide whether the statute imposed a disproportionate burden on expression, it declined to endorse the

D.C. Circuit’s conclusion that it did because the statute was “different in kind from the regulations of non-expressive activity that [the Supreme Court] ha[s] subjected to First Amendment scrutiny.” *Id.* at 69. The law’s “focus” was TikTok’s corporate ownership, not users’ speech. *Id.* And because TikTok would be banned only if it failed to divest, the failure to divest was a “causal step[]” between the law and the alleged burden on speech. *Id.*

In *Indigo Room* and *Gary*, the Eleventh Circuit held that laws prohibiting persons under 21 from entering alcohol-serving establishments do not disproportionately burden speech even if they have the effect of preventing young people from engaging in nude dancing or attending political rallies. *Indigo Room*, 710 F.3d at 1299–1300; *Gary*, 311 F.3d at 1340. Those laws did not implicate the First Amendment because they were focused on exposure to alcohol, not expression, and there were causal steps between the laws and the burden on expression—the speech forums’ decisions to serve alcohol.

On the flip side, if a law regulating commercial activity on its face singles out speech and has the effect of burdening it with no intervening causal steps, it more likely imposes a disproportionate burden on expression. For example, in *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue*, the Supreme Court held that a tax on the use of paper and ink that was crafted to apply to only “a few of the largest newspapers” in Minnesota triggered First Amendment scrutiny. 460 U.S. 575, 592 (1983). Even though taxing paper and ink is not a direct regulation of expression, it was apparent that the regulation was focused on expression. *Id.* at 585. The gerrymandered nature of the

tax, which was “without parallel in [Minnesota’s] tax scheme,” was not “justified by some special characteristic of the press” and thus applied to certain newspapers just because they were newspapers. *Id.* at 582, 585.

The Act, like the laws in *TikTok*, *Indigo Room*, and *Gary*, does not disproportionately burden expression. First, its focus is not speech but account-holder contracts. If two social-media platforms were identical in all respects except that one required users to become account holders and the other did not, the Act would impose no restrictions on the latter even though both platforms provide the same speech to children. So just like the law in *TikTok* “focus[ed]” on TikTok’s corporate control by “a foreign government,” 604 U.S. at 69, and the laws in *Gary* and *Indigo Room* focused on exposure to alcohol, the Act focuses on a particular business practice.

Second, there are “causal steps between [the Act] and the alleged burden on protected speech.” *Id.* The alleged burden here, as in *TikTok*, is that users will not be able to speak and access speech on covered platforms. But in both cases, any limit on access results from the platforms’ chosen business practices, not the law. Because the law in *TikTok* barred access only if TikTok chose not to divest from Chinese control, the failure to divest was a “causal step” between the law and the alleged burden on expression. *Id.* Similarly, a child will be limited from accessing a platform under the Act only if the platform chooses to condition access on users’ contracting for an account. Platforms are thus “punished” for their “nonexpressive conduct”—contracting with kids for

accounts—“not [their or their users’] speech.” *Virginia v. Hicks*, 539 U.S. 113, 123 (2003).

All that makes the Act “different in kind from the regulations of non-expressive activity that [the Supreme Court] ha[s] subjected to First Amendment scrutiny.” *TikTok*, 604 U.S. at 69. The Act is not “directed at” any expression. *Arcara*, 478 U.S. at 707. Instead, it is directed at a problem as old as time: Children, who “lack[] reason and judgment,” being taken advantage of by sophisticated parties that seek to exploit them for financial gain. *NR4*, 133 F.4th at 1117.

B. Even if heightened scrutiny applied, NetChoice has not established that the Act is facially unconstitutional.

Regardless whether First Amendment scrutiny applies, Plaintiffs have not shown that the Act’s “constitutional applications” are “substantially outweigh[ed]” by “unconstitutional applications.” *Moody*, 603 U.S. at 723–24. The Act—which protects all children under age 18—has a broad sweep of constitutional applications because it can be validly enforced against a platform when it provides accounts to children of “tender years.” *Prince*, 321 U.S. at 169–70. The First Amendment does not strip States of the power to protect those children from platforms. They have more limited First Amendment interests than older children, and States have an even greater interest in protecting them because they are more vulnerable to the harms posed by platforms. *See Erznoznik v. City of Jacksonville*, 422 U.S. 205, 214 n.11 (1975) (“[T]he age of the minor is a significant factor” in determining the First Amendment interests at stake.).

“The [Supreme] Court long has recognized that the status of minors under the law is unique in many respects.” *Bellotti v. Baird*, 443 U.S. 622, 633 (1979) (plurality op.); *Prince*, 321 U.S. at 169–70. “[A]lthough children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children’s vulnerability.” *Bellotti*, 443 U.S. at 635. “[E]ven where there is an invasion of protected freedoms[,] the power of the [S]tate to control the conduct of children reaches beyond the scope of its authority over adults.” *Id.* at 636. “It is well settled,” for example, “that a State . . . can adopt more stringent controls on communicative materials available to youths than on those available to adults” because “[t]he First Amendment rights of minors are not coextensive with those of adults.” *Erznoznik*, 422 U.S. at 212, 214 n.11. States can impose “restraints on minors which would be unconstitutional [under the First Amendment] if placed on adults” when the restraints are “based on” the “peculiar vulnerability of children.” *Johnson v. City of Opelousas*, 658 F.2d 1065, 1073 (5th Cir. 1981).

That precedent accords with history and tradition. See *Free Speech Coal. v. Paxton*, 606 U.S. 461, 472 (2025) (considering “[h]istory, tradition, and precedent” in determining the scope of children’s First Amendment rights). States have always had more power to regulate children’s activities. At the Founding, children were viewed as “lack[ing] the reason and judgment necessary to be trusted with legal rights.” *NR4*, 133 F.4th at 1117. So the Founding generation “imposed age limits on all manner of activities.” *Id.* at 1123. Children could not enlist in the military without parental consent. *Id.* at 1117. States

“set age limits restricting marriage without parental consent.” *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 834 (2011) (Thomas, J., dissenting). And children did not have access to the same speech as adults. “Parents controlled children’s access to information, including books,” *NR4*, 133 F.4th at 1117, and States prohibited “[e]ntertaining . . . [c]hildren” without parental consent. *Juries verdict agst Alice Thomas*, Volume 29: Records of the Suffolk Cnty. Ct. 1671-1680 Part 1, pp. 82-83, available at <https://tinyurl.com/3r8hw435>; *see also* Book of the Gen. Laws and Liberties of Mass. 137 (1649) (penalizing “entertain[ing]” children “to the dishonour of God and grief of their parents”). The Founding generation also “targeted for special regulation works manifestly tending to the corruption of the morals of youth.” *Free Speech Coal.*, 606 U.S. at 473 (quotation omitted).

This longstanding “power” to regulate “children’s activities” is at its zenith for children of “tender years.” *Prince*, 321 U.S. at 168–70. The State has a greater interest in protecting those children because they are more vulnerable to “emotional excitement and psychological or physical injury.” *Id.* at 170; *see also Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683–84 (1986) (Some “speech could well be seriously damaging to” young children but not high-school students.); *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2355 n.8 (2025) (similar). Young children also have narrower First Amendment interests because they “are at a stage in which learning how to develop relationships and behave in society is as or even more important than their forming particular views on controversial topics.” *Walker-Serrano ex rel. Walker v. Leonard*, 325 F.3d 412, 417 (3d Cir. 2003); *see also*

C.S. v. McCrumb, 135 F.4th 1056, 1065–66 (6th Cir. 2025) (recognizing that the “immaturity” of “elementary-aged children” bears on the scope of their First Amendment interests); *Morgan v. Swanson*, 659 F.3d 359, 386–87 (5th Cir. 2011) (en banc) (“elementary students” are still learning “the most basic social and behavioral tasks”).

NetChoice, however, believes that the First Amendment operates the same for all children—from birth to age 18—as it does for adults. *See* Discovery Resp. at 43, *CCLA v. Uthmeier*, No. 4:24-cv-438 (N.D. Fla. Jan. 13, 2025), ECF No. 51-8 (denying that “one year olds” lack a First Amendment interest in social-media accounts). As NetChoice would have it, multibillion-dollar corporations have a First Amendment right to contract with 6-year-olds, entice them to engage in “Blackout Challenge[s],” and expose them to sexual predators, as long as adults would have a right to that commercial activity. *Anderson*, 116 F.4th at 181. That extreme position contravenes centuries of history, tradition, and precedent.

The Act thus has a broad sweep of valid applications. Tennessee can at the very least enforce it against covered platforms when they provide accounts to young children. That is a valid exercise of Tennessee’s longstanding “power” to regulate the “activities” of children of “tender years” to protect them from “danger[.]” *Prince*, 321 U.S. at 168–70. Even if those children have a First Amendment interest in social-media accounts that expose them to harm, the State is “justif[ied]” in protecting them because of their unique “vulnerability.” *Johnson*, 658 F.2d at 1073.

And NetChoice has made no showing that the Act’s supposedly unconstitutional applications to older children substantially “outweigh” its constitutional applications to younger children. *Moody*, 603 U.S. at 723–24. NetChoice did “not even attempt[]” to do so. *Free Speech Coal.*, 606 U.S. at 481 n.7. It just declared that “all aspects of the Act[] . . . in every application” are unconstitutional. Memo. in Support of Mot. for Prel. Inj., R.9, PageID#114. That alone forecloses a preliminary injunction. *See NetChoice v. Fitch*, 134 F.4th 799, 809 (5th Cir. 2025) (vacating a preliminary injunction that NetChoice obtained because it did not meet its burden under *Moody*); *Project Veritas v. Schmidt*, 125 F.4th 929, 961 (9th Cir. 2025) (en banc) (“The plaintiff “fail[ed] to meet its burden” under *Moody* “because it ma[de] little effort to identify and weigh the . . . statute’s lawful and unlawful applications.”).

III. IN ANY EVENT, NETCHOICE LACKS PRUDENTIAL STANDING TO ASSERT THE RIGHTS OF SOCIAL-MEDIA USERS.

The district court correctly concluded that NetChoice cannot obtain a preliminary injunction to prevent harm to third-party social-media users. *See Gill v. Whitford*, 585 U.S. 48, 73 (2018) (“A plaintiff’s remedy must be tailored to redress *the plaintiff’s* particular injury.” (emphasis added)); *Lewis v. Casey*, 518 U.S. 343, 357 (1996) (“The remedy must of course be limited to the inadequacy that produced the [plaintiff’s] injury in fact.”). But more fundamentally, NetChoice lacks prudential standing to assert the rights of social-media users at all.

NetChoice relies on users’ rights both in arguing that it will succeed on the merits and in claiming that the equities support a preliminary injunction. *See* Init. Br. 59 (asserting that the Act violates “adults” and “minors’ rights”); Memo. in Support of Mot. for Prel. Inj., R.9, PageID#129 (claiming that the equities favor a preliminary injunction because the Act violates “minors and adults’ access to protected speech”). In asserting the rights of its members’ users, NetChoice asks this Court to bless what the Third Circuit has dubbed “derivative standing,” where an association uses associational standing to satisfy Article III and then invokes third-party standing to assert the rights of nonmembers with whom only its members have a relationship. *See Pa. Psychiatric Soc’y v. Green Spring Health Servs.*, 280 F.3d 278, 291–93 (3d Cir. 2002). But there is no derivative-standing exception to the bar on asserting others’ rights. If NetChoice wishes to assert others’ rights, NetChoice itself must satisfy an exception that allows it to do so.

Associations cannot string together associational and third-party standing (two different prudential-standing exceptions) to assert the rights of parties who are multiple “steps removed” from the association. *Id.* at 294–95 (Nygaard, J., dissenting); *see also Ne. Ohio Coal. for the Homeless v. Blackwell*, 467 F.3d 999, 1013 (6th Cir. 2006) (McKeague, J., concurring). Associational standing is a vehicle only for enforcing “the rights of . . . members.” *See Ass’n of Am. Physicians & Surgeons v. FDA*, 13 F.4th 531, 539 (6th Cir. 2021). It is a “strand” of “representational standing” that allows an association to enforce the rights of members—even though they are “absent third parties”—because the association has a “particular,” “recognized” “relationship[]” with them. *United Food*

Com. Workers Union Loc. 751 v. Brown Grp., 517 U.S. 544, 557 (1996). Given the close relationship between an association and its members, the “concrete adverseness” that federal courts require is presumed when an association brings a claim “on behalf of its directly affected members.” *UAW v. Brock*, 477 U.S. 274, 289 (1986) (citation omitted). That presumption stretches to its breaking point when an association seeks to represent members who would, in turn, be representing the interests of nonmembers—here, child social-media users—if they sued. *Cf. Ass’n of Am. Physicians*, 13 F.4th at 538 (explaining that allowing associations to assert even *members’* rights raises Article III concerns under the Supreme Court’s recent precedent); *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 400 (2024) (Thomas, J., concurring) (agreeing with *Ass’n of Am. Physicians*).

If NetChoice can chain together two prudential-standing exceptions to assert the rights of persons with whom it concededly has no relationship, there would be no logical stopping point. A plaintiff could assert the rights of persons three, four, or five steps removed as long as it could stack enough prudential-standing exceptions to get there. Allowing plaintiffs to game prudential standing like that would turn the doctrine on its head.

CONCLUSION

This Court should affirm.

October 10, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This amicus brief complies with Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f) and Sixth Circuit Rule 32(b), it contains 6,049 words.

2. This amicus brief also complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 29 and 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface in 14-point Garamond font using Microsoft Word.

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CERTIFICATE OF SERVICE

I certify that on October 10, 2025, I electronically filed this amicus brief with the Clerk of Court using the Court's CM/ECF system, which will send a notice of docketing activity to all parties who are registered through CM/ECF.

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