

No. 25-5660

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NETCHOICE, LLC,

PLAINTIFF-APPELLANT,

v.

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

DEFENDANT-APPELLEE.

On Appeal from the United States District Court for the
Middle District of Tennessee at Nashville
Case No. 24-cv-01191
Honorable Eli J. Richardson, U.S. District Judge

**BRIEF OF *AMICI CURIAE* ELECTRONIC FRONTIER FOUNDATION
AND THE FREEDOM TO READ FOUNDATION IN SUPPORT OF
PLAINTIFF-APPELLANT AND REVERSAL**

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 25-5660

Case Name: Netchoice LLC v. Jonathan Skrmetti

Name of counsel: Aaron Mackey

Pursuant to 6th Cir. R. 26.1, Electronic Frontier Foundation, Freedom to Read Foundation
Name of Party

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No

CERTIFICATE OF SERVICE

I certify that on September 10, 2025 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Aaron Mackey
Electronic Frontier Foundation

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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STATEMENT OF INTEREST¹

The Electronic Frontier Foundation (EFF) is a nonprofit civil liberties organization with more than 30,000 active donors that has worked since 1990 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. 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).

The Freedom to Read Foundation (FTRF) is a nonprofit organization established to foster libraries as institutions that fulfill the promise of the First Amendment; support the rights of libraries to include in their collections and make available to the public any work they may legally acquire, including a broad array of authors and viewpoints; establish legal precedent for the freedom to read of all persons; and protect the public against efforts to suppress or censor speech.

¹ Pursuant to Federal Rule of Appellate Procedure Rule 29(c), amici certify that no person or entity, other than amici, its members, or its counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part. All parties consent to the filing of this brief.

INTRODUCTION

Tennessee House Bill 1891 (“the Act”) violates the First Amendment rights of Tennessee minors and adults. The Act blocks minors from accessing protected speech on social media and engaging in their own protected expression absent their parents’ express consent. It also prevents adult and minor social media users from accessing social media without first confirming their age in ways that compromise their anonymity, privacy, and security.

The Act’s prohibition on minors’ access to social media absent parental approval prevents them from engaging in protected expression and receiving lawful speech in violation of the First Amendment. It also deprives minors of the ability to use some of the most ubiquitous and far-reaching forums for digital expression.

The Act extends its First Amendment violations beyond minors to all Tennesseans by requiring social media services to verify the ages of every user. The age-verification gates used by social media services will block minor and adult internet users from accessing lawful speech online when they cannot to verify their ages or are unwilling to do so. It will likewise chill the users’ ability to speak anonymously and increase users’ risk of privacy invasions and data breaches.

Because the Act applies to speech that is legal for both adults and minors, this case is not controlled by *Free Speech Coalition v. Paxton*, 145 S. Ct. 2291

(2025). In that case, the Supreme Court relied on the fact that minors had no First Amendment rights to read and view the prohibited speech. As explained further below, that key distinction renders *Paxton* irrelevant.

The Act frustrates all Tennesseans' First Amendment rights to speak and to access protected online speech. Because the Act imposes a content-based restriction on minors' and adults' ability to access lawful speech, the statute is subject to strict scrutiny. *See Brown v. Entertainment Merchs. Ass'n*, 564 U.S. 786, 799 (2011).

Tennessee has a legitimate interest in protecting minors from harm, "but that does not include a free-floating power to restrict the ideas to which children may be exposed." *Id.* at 794. Courts have also repeatedly struck down online age-verification mandates like those imposed by the Act because they are an affront to minors and adults' First Amendment rights.² The same result is warranted here.

² *See NetChoice LLC v. Carr*, 2025 WL 1768621 (N.D. Ga. June 26, 2025); *NetChoice, LLC v. Yost*, 2025 WL 1137485 (S.D. Ohio Apr. 16, 2025), appeal docketed No. 25-3371 (6th Cir. May 13, 2025); *NetChoice, LLC v. Griffin*, 2025 WL 978607 (W.D. Ark. Mar. 31, 2025), appeal docketed No. 25-1889 (8th Cir. May 2, 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. Supp. 3d 1105 (D. Utah 2024), appeal docketed *NetChoice, LLC v. Brown*, No. 24-4100 (10th Cir. Oct. 11, 2024); *Comput. & Commc'ns Indus. Ass'n v. Uthmeier*, 2025 WL 1570007 (N.D. Fla. June 3, 2025), appeal docketed 25-11881 (11th Cir. June 5, 2025).

ARGUMENT

I. THE ACT BLOCKS MINORS AND DISCOURAGES ADULTS FROM SPEAKING ON AND ACCESSING SPEECH ONLINE.

A. The Act prohibits young people from engaging in protected expression protection and burdens adults' ability to do the same.

The Act blocks young people from using social media—some of the most prominent forums for expressive activity online—subjecting the exercise of their First Amendment rights to parental permission and subsequent veto. And the Act impermissibly burdens adults' rights to speak and access speech online by requiring social media services to impose speech-chilling and privacy invasive age-verification gates on their sites.

The Act requires social media services to verify the age of *every* user when they sign up for an account. Tenn. Code § 47-18-5703(a)(1). If the user is a minor, the law prohibits the young person from joining the social media service unless a parent provides verifiable consent. Tenn. Code § 47-18-5703(a)(2). A parent can revoke consent and at any time. Tenn. Code § 47-18-5703(b).

B. Minors and Adults Rely on the Internet to Engage in a Diverse Range of Protected Expression.

The internet plays a dominant role in the exercise of First Amendment rights today, and social media services are “perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard.” *Packingham v. North*

Carolina, 582 U.S. 98, 107 (2017). It furthers the “fundamental principle of the First Amendment” that “all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more.” *Id.* at 104. The First Amendment protects the right to receive others’ speech. *Bd. of Educ. v. Pico*, 457 U.S. 853, 867 (1982) (plurality). Likewise, “[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).

An estimated 5.24 billion people use social media for everything from expressing themselves politically, engaging with elected representatives, 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,

³ Number of internet and social media users worldwide as of February 2025, Statista (Feb. 2025), <https://www.statista.com/statistics/617136/digital-population-worldwide/>.

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 social and political activities, including national campaigns across the political spectrum, 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

⁴ 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://www.common sense media.org/sites/default/files/research/report/2024-double-edged-sword-hopelab-report_final-release-for-web-v2.pdf.

⁵ Christopher St. Aubin & Jacob Liedke, *News Platform Fact Sheet*, Pew Rsch. Ctr. (Sept. 17, 2024), <https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/>.

⁶ Douglas A. Blackmon et al., *Birth of a Movement*, Wall St. J. (Oct. 29, 2010), <http://on.wsj.com/2hZCWio>.

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://pubmed.ncbi.nlm.nih.gov/32200194/>.

⁸ Samuel Bestvater et al., *Americans’ Views of and Experiences With Activism on Social Media*, Pew Rsch. Ctr. (June 29, 2023), <https://www.pewresearch.org/internet/2023/06/29/americans-views-of-and-experiences-with-activism-on-social-media/>.

Social media helps minors develop their own ideas, learn to express themselves, and engage productively with others in our democratic public sphere.⁹ “[I]t is obvious that [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) (Posner, J). Social media is a key venue for that.

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.”¹⁰ “In any given day, about one in 10 tweens and teens will use their digital devices to

⁹ See Rainier Harris, *How Young People Use Social Media to Engage Civically*, PBS (Nov. 5, 2020), <https://www.pbs.org/newshour/classroom/classroom-voices/student-voices/2020/11/student-voice-how-young-people-use-social-media-to-engage-civically>; Jessica L. Hamilton et al., *Re-Examining Adolescent Social Media Use and Socioemotional Well-Being Through the Lens of the COVID-19 Pandemic*, 662, *Persp. Psych. Sci.* (May 9, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9081105/> (“Social media provides readily-accessible tools for teens to share developing thoughts and experiment with new social identities, particularly without access to traditional methods.”).

¹⁰ Emily A. Vogels & Risa Gelles-Watnick, *Teens and Social Media: Key Findings From Pew Research Center Surveys*, Pew Rsch. Ctr. (Apr. 24, 2023), <https://www.pewresearch.org/short-reads/2023/04/24/teens-and-social-media-key-findings-from-pew-research-center-surveys/>.

create some type of art or music.”¹¹ In addition, minors and young adults report that the internet helps them learn about art and music history.¹²

Places of worship use social media to share information about upcoming events, livestream services, and foster community.¹³ Social media is specifically a vital source of religious and spiritual community and information for young people.¹⁴ One young person even created “The Robloxian Christians” as a place for kids on the Roblox gaming platform to pray for one another and talk about their

¹¹ Victoria Rideout et al., *The Common Sense Census: Media Use by Tweens and Teens*, 41, Common Sense (2021), https://www.common sense media.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf.

¹² 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://www.eff.org/deeplinks/2024/03/thousands-young-people-told-us-why-kids-online-safety-act-will-be-harmful-minors#art>.

¹³ Rebecca Heilweil, *Religious Leaders Are Becoming Content Creators to Keep Their Followers Engaged*, Vox (Sept. 18, 2020), <https://www.vox.com/recode/2020/9/18/21443661/religion-logging-off-online-engagement-content-creators>.

¹⁴ See Elizabeth Dias, *Facebook’s Next Target: The Religious Experience*, N.Y. Times (Jul. 25, 2021), <https://www.nytimes.com/2021/07/25/us/facebook-church.html>.

faith.¹⁵ It has expanded into a “youth-led virtual church ministry serving upwards of 40,000 young people from over 85 countries.”¹⁶

Finally, social media enables individuals whose voices would otherwise not be heard to make vital and even lifesaving connections with one another, and to share their unique perspectives more widely.¹⁷ For example, people with disabilities use social media to build community, reduce isolation and stigma, and educate others.¹⁸ Survivors of domestic violence rely on the accessibility and

¹⁵ Joely Johnson Mork, *Teen’s Online Church Draws Young People From Around the World*, Faith & Leadership (Aug. 23, 2016), <https://faithandleadership.com/teens-online-church-draws-young-people-around-the-world>.

¹⁶ *The Robloxian Christians*, Exponential, <https://exponential.org/the-robloxian-christians>.

¹⁷ See, e.g., Brooke Auxier, *Social Media Continue to Be Important Political Outlets for Black Americans*, Pew Rsch. Ctr. (Dec. 11, 2020), <https://www.pewresearch.org/short-reads/2020/12/11/social-media-continue-to-be-important-political-outlets-for-black-americans>; Carrie Back, *How Indigenous Creators Are Using TikTok to Share Their Cultures*, Travel & Leisure (Oct. 21, 2022), <https://www.travelandleisure.com/culture-design/how-indigenous-creators-use-tiktok-to-share-their-cultures>.

¹⁸ Fortesa Latifi, *Chronic Illness Influencers on TikTok Are Showing the Reality of Being Sick*, Teen Vogue (Sept. 22, 2022), <https://www.teenvogue.com/story/chronic-illness-influencers-on-tiktok-are-showing-the-reality-of-being-sick>; Kait Sanchez, *How a Teen Punk Led a Movement for Disabled People Online*, Verge (July 27, 2021), <https://www.theverge.com/22583848/disabled-teen-cripple-punk-media-representation>.

anonymity of online communities to seek advice and resources.¹⁹ Social media use has been shown to reduce loneliness, social isolation, and depression in rural and elderly populations, both of whom face limited mobility and decreased ability to socialize in person.²⁰ And many young LGBTQ+ people who face discrimination and judgment offline turn to social media for community, exploration, and support.²¹

C. The Vast Majority of Online Content That Will Be Age-Gated For All Users and Blocked for Minors Is Constitutionally Protected.

Minors enjoy the same First Amendment right as adults to access protected

¹⁹ Tully O’Neill, “*Today I Speak*”: Exploring How Victim-Survivors Use Reddit, 7 Int’l J. for Crime, Just. & Soc. Democracy 44, 44–45 (2018), <https://www.crimejusticejournal.com/article/view/893>; 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://www.nsvrc.org/blogs/online-communities-survivors-websites-and-resources-offering-support-and-help1>.

²⁰ 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*, Soc. Sci. Comput. Rev. (Aug. 5, 2022), <https://journals.sagepub.com/doi/full/10.1177/08944393221117466>; Erica Chen et al., *Online Social Networking and Mental Health Among Older Adults: A Scoping Review*, Canadian J. on Aging, 26-27 (2022), <https://psycnet.apa.org/record/2022-43114-005>.

²¹ See Claire Cain Miller, *For One Group of Teenagers, Social Media Seems a Clear Net Benefit*, N.Y. Times (May 24, 2023), <https://www.nytimes.com/2023/05/24/upshot/social-media-lgbtq-benefits.html>; Ammar Ebrahim, *TikTok: ‘I Didn’t Know Other LGBT Muslims Existed,’* BBC (Nov. 28, 2020), <https://www.bbc.com/news/av/uk-55079954>.

speech on social media. As the examples above demonstrate, socially valuable speech is abundant on social media. But online speech and access to it is protected as to both minors and adults, even if its social value is not obvious, or even when a state deems it to be harmful. *Snyder v. Phelps*, 562 U.S. 443, 458 (2011); see *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 esthetic and moral value. See *Brown*, 564 U.S. at 790.

Bedrock First Amendment principles apply to minors “[e]ven where the protection of children is the object.” *Id.* at 804–05 (state cannot prohibit sales of violent video games to children); *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212–13 (1975) (city cannot prohibit nudity being displayed at drive-in theaters to protect children); *Reno*, 521 U.S. at 874 (Congress cannot restrict the distribution of indecent content online to protect children).

The Supreme Court’s recent decision in *Paxton*, 145 S.Ct. 2291, does not save the Act. The Act unconstitutionally blocks minors’ access to social media absent parental consent, and the vast majority of speech on those services is fully protected as to *all* internet users. By contrast, the Texas law upheld in *Paxton* only aims to blocks minors’ access to speech they have no First Amendment right to access. The Court reasoned that history, tradition, and precedent allow states to

“prevent children from accessing speech that is obscene to children.” *Id.* at 2303.

The Court explained that “because the First Amendment permits States to prohibit minors from accessing speech that is obscene to them, it likewise permits States to employ the ordinary and appropriate means of enforcing such a prohibition.” *Id.* at 2307.

The Court found that the Texas law imposed an “incidental” burden on adults’ protected speech—thus triggering intermediate, rather than strict, scrutiny—only because it was aimed at “harmful to minors” speech. *Id.* at 2315. As the Court explained, “where the speech in question is unprotected, States may impose ‘restrictions’ based on ‘content’ without triggering strict scrutiny.” *Id.* at 2314. *Paxton* also left open whether the Texas law violated the First Amendment as applied, given that its age-verification requirement could block access to speech that is protected as to both minors and adults. *Id.* at 2308, n. 7.

Critically, strict scrutiny remains “the standard for reviewing the direct targeting of fully protected speech.” *Id.* at 2310. And it applies “even where the protection of children is the object.” *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786, 804–05 (2011). The Act thus triggers strict scrutiny because its age-verification provision burdens access to all manner of protected speech for both minors and adults. And the Act fails strict scrutiny. *See U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813 (2000). Moreover, a state’s interest

in protecting children from speech that is obscene to them “does not include a free-floating power to restrict” them from accessing speech online. *Brown*, 564 U.S. at 794.

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

Minors and adults alike enjoy the First Amendment right to access and engage in protected speech online. No legal authority permits lawmakers to block minors from accessing protected expression on social media sites absent parental consent. Nor is there any legal authority that permits lawmakers to burden adults’ access to political, religious, educational, and artistic speech with the Act’s restrictive age-verification regimes out of a concern for what minors might see.

A. The Act Impermissibly Prevents Minors From Accessing Protected Speech.

The Act violates the First Amendment because it imposes content-based restrictions on minors’ ability to engage in and to receive protected speech, as described above, *supra*, Sec. I.A.

The Act’s restrictions are classic content-based distinctions, and the law is thus subject to strict scrutiny. *See Brown*, 564 U.S. at 799. Because the Act targets all speech occurring on social media, and blocks minors from speaking and accessing speech on those services absent parental consent, the law imposes content-based restrictions that are subject to strict scrutiny. *Id.*

The First Amendment protects minors and adults’ right to receive speech. *See Mahanoy Area School District v. B.L.*, 594 U.S. 180, 190 (2021) (students have a right to receive unpopular, off-campus speech); *Struthers*, 319 U.S. at 143 (right to receive literature); *Lamont v. Postmaster Gen. of U. S.*, 381 U.S. 301, 307-308 (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). Minors have this First Amendment protection to receive information in both digital and physical spaces. *Packingham*, 582 U.S. 98, 107-108 (holding that social media prohibition violated the First Amendment right of internet users to “gain access to information”).

B. The Act Also Burdens the First Amendment Rights of Adults and Minors by Imposing Age Gates that Burden Expression, Anonymity, and Privacy.

The Act also violates the First Amendment rights of all social media users because it requires every user to verify their age with documentation. That process compromises internet users’ anonymity and privacy, before using social media.

Although the Act does not specify how social media services must verify the ages of their users, it is likely that services will adopt the most invasive forms of age verification via government-issued identification or similar means. These systems thus require users to disclose sensitive, private information. Indeed, it is hard to fathom how a parent or guardian could verify their relationship to their child on a social media service for purposes of providing their consent or veto,

without providing government-issued documentation.

Because the Act creates liability for services that fail to prohibit minors from accessing social media services absent parental consent, those services would be risking state enforcement should fail to accurately segregate minor users from adults. *See Carr*, 2025 WL 1768621 at *14 (“[G]iven the Act’s novelty and lack of clarity, the [requirement that social media companies implement “commercially reasonable” age verification] would incentivize social media platforms to err toward the side of caution to avoid liability” by “collect[ing] government-issued identification”).

Imposing age-verification mandates before accessing speech that is protected as to both minors and adults burdens the First Amendment rights of all internet users in several respects. *See Ashcroft v. ACLU*, 542 U.S. 656, 667 (2004).

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

Should social media companies implement verification via government-issued identification or similar means, 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; *see also 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”). 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.²²

Estimates show another 34.5 million adult citizens use driver’s licenses or state IDs that lack their current names or addresses.²³

Non-ID-based methods that have been suggested or implemented elsewhere also burden the First Amendment rights of many internet users. Age verification based on public or private transactional data will exclude many adults. For example, a service relying on mortgage documents would exclude the nearly 35 percent of Americans who do not own a home.²⁴ Should credit data be used, 26 million Americans—including over 80 percent of 18- and 19-year-olds—are “credit invisible,” meaning they do not have a credit record for age-verifying

²² Jillian Andres Rothschild et al., *Who Lacks ID in America Today? An Exploration of Voter ID Access, Barriers, and Knowledge*, Univ. Md. Ctr. for Democracy & Civic Engagement 2 (Jan. 2024), <https://cdce.umd.edu/sites/cdce.umd.edu/files/pubs/Voter%20ID%202023%20survey%20Key%20Results%20Jan%202024%20%281%29.pdf>.

²³ *Id.* at 2, 5; see also Michael J. Hanmer & Samuel B. Novey, *Who Lacked Photo ID in 2020?: An Exploration of the American National Election Studies*, Univ. Md. Ctr. for Democracy & Civic Engagement 5 (Mar. 2023), https://www.voteriders.org/wp-content/uploads/2023/04/CDCE_VoteRiders_ANES2020Report_Spring2023.pdf (“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.”).

²⁴ See U.S. Census Bureau, CB 25-58, *Quarterly Residential Vacancies and Homeownership: First Quarter 2024*, 5 (Apr. 28, 2025), <https://www.census.gov/housing/hvs/files/currenthvspress.pdf>.

vendors to check.²⁵

Should social media services be permitted to use data brokers and commercial services to verify their users' ages, similar problems would arise. These entities purchase and collect massive amounts of private data.²⁶ But the data often contains inaccurate or outdated information, resulting in errors that could mistakenly block adults from accessing social media.²⁷

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

Should users have to provide identifying information to services seeking to comply with the Act, it would impermissibly burden their First Amendment right to anonymity online. *See Am. Booksellers Found.*, 342 F.3d at 99 (age-verification schemes “require that website visitors forgo the anonymity otherwise available on the internet”). A reported 86 percent of internet users have taken steps online to

²⁵ Consumer Fin. Prot. Bureau, *Data Point: Credit Invisibles* 12 (May 2015), https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

²⁶ *See Position Paper: Online Age Verification and Children's Rights*, European Digital Rights, 16-17 (Oct. 4, 2023), <https://edri.org/wp-content/uploads/2023/10/Online-age-verification-and-childrens-rights-EDRI-position-paper.pdf>; Jackie Snow, *Why Age Verification Is So Difficult for Websites*, Wall St. J. (Feb. 27, 2022), <https://www.wsj.com/articles/why-age-verification-is-difficult-for-websites-11645829728>.

²⁷ Suzanne Smalley, *'Junk Inferences' by Data Brokers Are a Problem for Consumers and the Industry Itself*, Record (June 12, 2024), <https://therecord.media/junk-inferences-data-brokers>.

minimize their digital footprints, and 55 percent have done so to “avoid observation by specific people, organizations, or the government.”²⁸

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 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).

Not surprisingly, 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 absence of anonymity will chill users’ ability to engage in dissent, discuss “sensitive, personal, controversial, or stigmatized content,” or seek help from online support communities.²⁹ *ACLU v. Gonzales*, 478 F. Supp. 2d 775, 806 (E.D. Pa. 2007); *see also State v. Weidner*, 235

²⁸ Lee Rainie et al., *Anonymity, Privacy, and Security Online*, Pew Rsch. Ctr. (Sept. 5, 2013), <https://www.pewresearch.org/internet/2013/09/05/anonymity-privacy-and-security-online/>.

²⁹ *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://pubmed.ncbi.nlm.nih.gov/26725547/>.

Wis. 2d 306, 320 (2000) (age verification “constitutes an encroachment into the personal lives of those who use the internet precisely because it affords anonymity”).

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

Even when users are comfortable with forgoing their anonymity, legitimate privacy and security concerns may dissuade them from accessing social media in the face of the Act’s age-verification requirements. “Requiring Internet users to provide . . . personally identifiable information to access a Web site 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 their [identifying information] . . . may chill the willingness of some adults to participate in the ‘marketplace of ideas’ which adult Web site operators provide.”).

The personal data that platforms may be required to collect to verify users’ ages is extremely sensitive and often immutable.³⁰ Whereas usernames, passwords,

³⁰ *See, e.g.*, Driver Privacy Protection Act, 18 U.S.C. §§ 2721 *et seq.*

and even credit card information can easily be changed in the event of identity theft or data breach, users' personal information contained in a government-issued ID (such as date of birth, name, and home address) are much more permanent.

Although Tennessee enacted the Act out of concern for children's wellbeing and privacy, the law's online age-verification regime will make children and adults less safe given the realities of the online advertising industry and data insecurity. All online data, including the sensitive personal data platforms would need to collect from all users to verify age and parental status under the Act, is transmitted through a host of intermediaries. This means that when a user shares identifying information with a website to verify their age, that data can be transmitted beyond the site, including to age-verification vendors and a series of additional parties.³¹ Moreover, almost all websites and services host a network of dozens of private, third-party trackers managed by data brokers, advertisers, and other companies that are constantly collecting data about a user's browsing activity.³² Personal information collected online sells for astonishing profits.³³

³¹ 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://www.eff.org/wp/behind-the-one-way-mirror>.

³² *Id.*

³³ See *Digital Advertising in the United States – Statistics & Facts*, Statista (May 20, 2025), <https://www.statista.com/topics/1176/online-advertising/#topicOverview> (the U.S. digital advertising market boasted “a revenue of over 317 billion dollars in 2024”).

These privacy concerns are not adequately addressed by the Act's prohibition on the retention of personally identifying information used to verify users' ages. Tenn. Code § 47-18-5703(c). This provision does not limit the third parties described above from collecting, selling, or otherwise disclosing the data should they acquire it. And once those entities collect users' personal information, they are likely to disclose it more broadly.

At minimum, the data will present a potential target for data thieves. Data breaches are an endemic and ever-increasing part of life. 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 2021.³⁴ Over 350 million people—more than the entire population of the United States—have been affected by these breaches, and 69 percent of general consumers have been victims of an identity crime more than once.³⁵

Compounding this concern, children are attractive targets for identity theft

³⁴ Identity Theft Res. Ctr., *2023 Data Brach Report 3* (Jan. 2024), https://www.idtheftcenter.org/wp-content/uploads/2024/01/ITRC_2023-Annual-Data-Breach-Report.pdf.

³⁵ *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://www.idtheftcenter.org/post/2023-consumer-impact-report-record-high-number-itrc-victims-suicidal-thoughts/>.

due to their “uniquely valuable” unused Social Security numbers.³⁶ 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.³⁷ The risk of data breach is likely to chill constitutionally protected expression.

CONCLUSION

For the foregoing reasons, the Court should reverse the district court’s order and enjoin the Act for violating the First Amendment rights of minors and adults.

Dated: September 10, 2025

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³⁶ Richard Power, *Child Identity Theft: New Evidence Indicates Identity Thieves Are Targeting Children for Unused Social Security Numbers*, Carnegie Mellon CyLab 3 (2011), https://www.akleg.gov/basis/get_documents.asp?session=29&docid=40175 (“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.”).

³⁷ *Id.*

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief of *Amici Curiae* complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief is printed in proportionally spaced 14-point Times New Roman font, using Microsoft® Word 365 and there are 4,793 words in the brief according to the word count of the word-processing system used to prepare the brief (excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii)). The brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5), and with the type style requirements of Fed. R. App. P. 32(a)(6).

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system on September 10, 2025.

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