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I. PRELIMINARY STATEMENT

1. The effect of social media use on young people has become an important issue of

lifesaving and are concerned that the Legislature chose to throw out the baby with the bathwater. If the law takes effect, each of them will be deprived of basic constitutional rights. More broadly, if not enjoined, the Act will isolate young adults from their communities, trap some of them in abusive environments, and stunt their development as free and independent citizens.

5. The Social Media Act on its face violates the First Amendment, the Due Process Clause of the Fourteenth Amendment, and the Commerce Clause of the United States Constitution. It is also preempted by Section 230 of the Communications Decency Act, 47 U.S.C. § 230. Plaintiffs accordingly seek an order declaring the Act invalid and enjoining its enforcement.

II.

IV. FACTUAL ALLEGATIONS

A. Social Media Provides a Forum for Expression and Association

15. Social media services provide forums for communication, expression, education, and association. The content on social media, like other online speech, is as “diverse as human thought.” *Reno*, 521 U.S. at 870. Ninety-seven percent of American teens are online daily, and approximately ninety percent between ages thirteen and seventeen have at least one social media account.⁴ Social media is integral to modern life, for both teens and adults, across human activity.

16. *Political expression and communication.* Social media provides an essential outlet for political expression. Youth-led movements have used social media to bring issues not adequately covered in traditional media to the forefront of public consciousness. For example, the “hashtag” device has helped fuel national conversations on racial inequality.⁵ Students at Marjory Stoneman Douglas High School in Parkland, Florida, have used social media to advocate for gun control after a school shooting killed seventeen people.⁶ Members of Utah Youth Environmental Solutions used social media to organize a rally to bring attention to climate change.⁷ As the United Nations Committee on the Rights of the Child has recognized, “the digital environment enables children, including children human rights defenders, as well as children in vulnerable situations, to communicate with each other, advocate for their rights and form associations.”⁸

17. Politicians and lawmakers use social media to communicate with voters, including

⁴ Susan Laborde,

teens approaching voting age.⁹ Social media is “near ubiquitous among members of Congress.”¹⁰ In 2021 alone, congressional representatives published more than 477,000 Twitter (now “X”) and 395,000 Facebook posts.¹¹ Senator Mitt Romney regularly posts on social media, including on “X” (1.9 million followers), Facebook (8 million followers), and Instagram (80,200 followers). Senator Mike Lee likewise uses his “X” account (700,000 followers), Facebook (377,000 followers), and Instagram (29,900 followers) to discuss policy and legislation. And the Utah Senate routinely posts about its activity and other state news on all three services. Utah Governor Spencer Cox—“one of the most prolific users of Twitter [X] in Utah’s political sphere”¹²—has even used social media to promote the Social Media Act.¹³ And his senior advisor and Director of the Office of Families, Aimee Winder Newton, has used social media to communicate with high schoolers.¹⁴

18. **Education.** Educators use social media to promote learning and share knowledge. Teachers use social media to “enhance interactions between students, between students and teachers, and with people and resources outside the classroom,” interactions essential to students’

⁹ Maria Petrova et al., *Social Media and Political Contributions: The Impact of New Technology on Political Competition*, MGMT. SCI. (May 14, 2020), <http://bit.ly/3FTs3eY>.

¹⁰ Patrick Van Kessel et al., *The congressional social media landscape*, PEW RSCH. CTR. (July 16, 2020), <http://tinyurl.com/5byur542>.

¹¹ Stacy Jo Dixon, *Total number of posts per platform by U.S. Congress members 2021*, STATISTA (June 21, 2022), <http://tinyurl.com/yx632peu>.

¹² Bryan Schott, *Utah first state to pass social media regulations aimed at protecting minors*, SALT LAKE CITY TRIB. (Mar. 23, 2023), <http://tinyurl.com/ysppswkz>

“sense of belonging in an educational community.”¹⁵ Teachers also use social media to educate

21. *Community and belonging.* ic

22. In this respect, social media is an “important venue for interaction and conversation among” American teenagers, and “plays a critical role in connecting teens to new friends” by “allowing teens to learn more about new friends and get to know them better.”²⁶ Zoulek, for example, uses Tumblr to connect with individuals who are disabled, neurodivergent, or queer—communities that they are not always able to access in person.

23. In another recent study, teenagers who use social media reported that they feel more connected to their friends (80%); had somewhere to express their creativity (71%); had a support network in challenging times (67%); and were more accepted (58%).²⁷ Overall, U.S. teenagers are more likely to report that social media has positive rather than negative effects on their lives.²⁸ In fact, some research suggests that the isolation that results from disconnecting teens from social media may be more harmful to their self-esteem and wellbeing than is heavy use of social media.²⁹

24. One key to these positive effects is the practice of recommending content and friends based on a user’s interests. This commonly appears in curated “newsfeed,” “for you,” or “discovery” functions, which use algorithms and machine learning to recommend content.

B. Social Media Provides Particular Benefits to Marginalized and At-Risk Youth

25. The profound support provided by social media is well-documented.³⁰ One study by the Pew Research Center revealed that “nearly seven-in-ten teens receive support from friends

²⁶ Amanda Lenhart, *Chapter 4: Social Media and Friendships*, PEW RSCH. CTR. (Aug. 6, 2015), <http://tinyurl.com/mukytfhk>

harnessed to identify and treat mental health problems among adolescents.³⁶ In their testimony against the Act, Zoulek noted their concern that preventing teens from talking about mental health issues using social media would itself negatively affect their mental health. And Christensen, who works as a social worker in an emergency room, has witnessed situations in which minors' posts on social media have signaled that the minor is struggling and prompted wellness checks.

34. Adolescents' use of social media cannot be treated or regulated monolithically. Research confirms that children and adolescents are affected by social media in different ways, based on their strengths, vulnerabilities, and predispositions, and on cultural, historical, and socio-economic factors.³⁷ The "use and effects of social media depend on a number of factors specific to individual teens," including "age, gender, race, ethnicity, personalities, and pre-existing emotional or mental health difficulties," as well as a teen's "familial rules/structure around social media, peer group dynamics, [and] parental and peer relationships," and "larger societal and cultural influences."³⁸

35. To account for these differences, parents have access to tools that allow them to monitor and control their children's social media use. Meta, for example, enables parents to set time limits, restrict use to particular times or days, view their child's friends or followers, and receive notifications when the minor reports an account or post.³⁹ Snapchat publishes a guide for parents to promote safe social media use and provides tools that allow parents to set content controls and see with whom their children are communicating.⁴⁰ Parents can also download

³⁶ Chris Hollis et al., *Editorial: The role of digital technology in children and young people's mental health – a triple-edged sword?*, 61 J. OF CHILD PSYCH. & PSYCHIATRY 837, 837-41 (2020), <http://tinyurl.com/bdhmxtaw>.

³⁷ Ine Beyens et al., *The effect of social media on well-being differs from adolescent to adolescent*, 10:10763 SCI. REPS. (2020), <http://tinyurl.com/3fsn3mvz>.

³⁸ Hamilton, *supra* note 24.

³⁹ Meta, Supporting safer and more positive experiences for your family, <https://familycenter.meta.com/> (last visited Jan. 11, 2024).

⁴⁰ Snapchat, Tools and Resources for Parents, <https://parents.snapchat.com/parental-controls> (last visited Jan. 11, 2024).

39. If allowed to take effect, the Act would restrict or burden access to most websites and apps designed to foster connection among users through posting content and sharing ideas.

43. Age verification, to the extent it can ever be effective, typically requires collecting sensitive personal information, such as a government-issued ID, credit card information, or biometric data. On October 15, 2023, the Division of Consumer Protection proposed a rule to implement the Social Media Act, which would require companies to use one of several prescribed age-verification methods and ensure that the chosen method “accurately” identifies whether each user is a minor. Utah Bull., Vol. 23, No. 20 at 18 (Oct. 15, 2023) (R152-63-3 & R152-63-4). The

to forego speaking. Cooper is so troubled by this provision that she intends to give up social media entirely if the law takes effect. Christensen also has concerns about the effect of this provision on the communities that she serves as a social worker, such as undocumented immigrants and at-risk youths who do not have access to a government ID.

47.

to guess whose “use” is proscribed and what might constitute “targeted” or “suggested” content. This broad restriction appears to bar displaying almost any content to a young user that is not sent to them directly. Services would need to either drastically redesign their offerings or shut out Utah minors completely. The threat of liability for user posts “would have an obvious chilling effect” on the content that services share with users. *Zeran*, 129 F.3d at 331. This provision would also limit minors’ ability to discover new friends with similar interests or experiences because it bars

65. Nor does the law define the phrases “substantial preoccupation or obsession” or “substantial difficulty to cease or reduce use,” leaving services to guess as to what behavior crosses the line. Does a teenager who spends time rehearsing before posting a video on social media

whether a provider’s content publication practices cross the line.

69. In response to these provisions, the “predictable tendency” is that services will “steer wide of the unlawful zone” and “swallow [their] words” by censoring their users rather than risk “mistaking whether” some content is addicting, whether “the legal system” will disagree, and whether it is even worth risking “legal costs” to defend its judgment. *Counterman v. Colorado*, 600 U.S. 66, 78 (2023) (citation & internal quotation marks omitted).⁴⁹ That is precisely what services told the Legislature and Governor Cox when they opposed the legislation and requested a veto.⁵⁰ The law will restrict the availability of information for users of all ages, and stifle important resources, particularly for vulnerable youth who rely on the internet for lifesaving information.

70. ***Penalties for violations.*** Failing to comply with Sections 13-63-102 through 13-63-105 can subject a company to a \$2,500 per-violation penalty and damages. Utah Code § 13-63-202(3)(b). Companies are also subject to a \$250,000 penalty for “each practice, design, or feature shown to have caused addiction,” plus an additional penalty of up to \$2,500 for each Utah minor “exposed to” it and the minor’s actual damages. *Id.* § 13-63-401(3)(a). The Division is also entitled to its attorneys’ fees if it prevails. *Id.* §§ 13-63-202(5), 301(3)(a), 401(5).

71. ***Private right of action and presumption of liability.*** The chilling effects imposed by the Social Media Act’s censorship and surveillance mandates are amplified by the creation of private rights of action and the presumption of liability. Section 13-63-301 permits any individual to sue a social media company for not complying with the Act’s restrictions in Sections 13-63-102 through 13-63-105 and to recover \$2,500 per “incident of violation” or actual damages, plus attorneys’ fees. Utah Code § 13-63-301. Section 13-63-501(1) permits individual lawsuits against

consequence of using or having an account” on a social media service, not limited to those associated with “addiction” under Section 13-63-401. The law creates a presumption of liability in actions that involve teenagers under sixteen. *Id.* § 13-63-501(4). In actions under Section 13-63-501, private plaintiffs may also recover \$2,500 per “incident of harm” as well as their attorneys’ fees. *Id.* § 13-63-501(3)(b).

72. These provisions are designed to force social media services to censor teenage users. Asked how the State intends to prove social media addiction under the Act, Governor Cox stated: “We don’t have to ... we gave a private right of action to parents and families ... to sue these companies if there’s harm done to their child. And harm is presumed.”⁵¹

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73. The wellbeing of children is undisputedly of immense significance. But whether legally it is a “compelling [interest]—or even an important one—may turn on how the government chooses to frame that interest going forward.” *NetChoice, LLC v. Yost*, __ F. Supp. 3d __, 2024 WL 104336, at *8 (S.D. Ohio, Jan. 9, 2024) (entering TRO to block enforcement of Ohio social media age-verification law). Even where the government’s interest is framed as “helping parents

significant protection from overbroad laws that chill speech within the First Amendment’s vast and privileged sphere.” *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244 (2002). A law is unconstitutionally overbroad if “a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *United States v. Stevens*, 559 U.S. 460, 473 (2010) (citation & internal quotation marks omitted). Without even pretending to regulate speech only in the narrowly defined categories of unprotected speech, the Act deprives all minors of access to a powerful medium of communication without regard to their informational needs or level of maturity, merely because (the State believes) access to *some* information by *some* minors

preselected by the provider” as well as “any chat comment, or interactive functionality” related to that preselected content. Utah Code § 13-63-101(10)(b). It does not apply to gaming services, online shopping or e-commerce sites, photo editing services, and career networking services. *Id.*

discriminates among speakers. The law restricts certain social media services while excluding others based on their content. For instance, the Act excludes websites that predominately feature “news, sports, entertainment, or other content that is preselected by the provider” and “any chat comment, or interactive functionality” related to that preselected content. Utah Code § 13-63-101(10)(b). Thus, the Act inexplicably restricts minors from freely expressing themselves on Instagram, for example, but allows them to do so in the comment section of an article on ESPN.com. The Act does not apply to social media companies with fewer than 5 million users, *id.* § 13-63-101(9), or to email providers or messaging services, *id.* § 13-63-101(10)(b). Similarly, the law selectively burdens social media users (*id.* § 13-63-102(3)), minors (*id.* §§ 13-63-102(3), 103(1)-(2), 104, and 105), and persons not linked to an account through “friending” (*id.* § 13-63-103(1)-(2)). These restrictions seek to prevent—and cannot be justified without reference to—supposed content-based harms from “the direct impact of [this] speech on its audience” (*id.* §§ 13-63-401, 501). *Boos v. Barry*, 485 U.S. 312, 321 (1988).

84. The Act fails strict scrutiny because Utah has failed to establish a compelling interest to justify these broad restrictions on speech. It is the state’s burden to demonstrate that the harms it seeks to address are not merely plausible, but compelling. *Playboy Ent. Grp.*, 529 U.S. at

significant governmental interest.” *Ward v. Rock Against Racism*, 491 U.S. 781, 796 (1989) (citation & internal quotation marks omitted). Although not as rigorous as strict scrutiny, intermediate scrutiny still requires the government to establish that the recited harms are real, that

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AND THE FIRST AMENDMENT (VOID FOR VAGUENESS)

89. Plaintiffs incorporate all prior paragraphs of the Complaint.

90. The Social Media Act fails to provide ordinary persons with fair notice of the proscribed conduct. The Act is so dependent on inherently subjective, undefined standards that it practically mandates arbitrary or discriminatory enforcement against disfavored content, viewpoints, and speakers. “It is essential that legislation aimed at protecting children from allegedly harmful expression—no less than legislation enacted with respect to adults—be clearly drawn and that the standards adopted be reasonably precise so that those who are governed by the law and those that administer it will understand its meaning and application.” *Interstate Circuit*, 390 U.S. at 686, 689 (citation & internal quotation marks omitted) (striking down city ordinance making it a misdemeanor to show films “unsuitable” for minors as impermissibly vague). Vagueness in a law that regulates expression “raise[s] special First Amendment concerns because of its obvious chilling effect on free speech.” *Brown*, 564 U.S. at 807 (quoting *Reno*, 521 U.S. at 871-72).

91. The Act fails to define multiple terms and phrases underpinning its central requirements and penalties and leaves regulators with unbridled discretion to impose massive penalties on social media companies. Section 13-63-103(3) does not define what counts as “advertising”; Section 13-63-103(5) does not define “use” or what might constitute “targeted” or “suggested” content; Section 13-63-401(2) offers no definition of the terms “practice,” “design,” or “feature”; Section 13-63-101(2) purports to define “addiction” but offers no definition of the phrases “substantial preoccupation,” “substantial difficulty,” or “physical, mental, emotional, developmental, or material harms”; Section 13-16-401(3)(a) fails to define the term “exposed to”; and Section 13-63-501 does not define “financial, physical, or emotional harm” and leaves unresolved whether liability exists for any such harms absent indication of “addiction.”

103. With limited exceptions, Section 230(c)(1) bars the imposition of liability on a website for claims stemming from the publication of information provided by a third party. Publication includes not just determining whether to publish, continue to publish, or withdraw third-party content, but also reviewing, editing, and prioritizing such content. Section 230 expressly preempts inconsistent state laws. 47 U.S.C. § 230(e)(3).

104. Section 230(c)(1) preempts Sections 13-63-103(1), 13-63-103(2), 13-63-103(3), 13-63-103(5), 13-63-401(2), and 13-63-501 because they treat social media services as the publishers or speakers of information provided by other information content providers. Section 13-63-103(1) would hold social media services liable for publishing direct messages; Section 13-63-103(2) for publishing profiles in search results; Section 13-63-103(3) for publishing third-party advertising; Section 13-63-103(5) for publishing any kind of “suggested” or “targeted” content; and Sections 13-63-401(2) and 13-63-501 for publishing any kind of content that causes any minor to develop “an addiction” to their services or otherwise causes “harm.”

105. Plaintiffs suffer injuries from these Social Media Act provisions because the provisions compel social media companies to block (collaterally censor) Plaintiffs’ speech and access to speech, the precise evil Congress sought to avert by enacting Section 230. Sections 13-63-103(1), 13-63-103(2), 13-63-103(3), 13-63-103(5), 13-63-401(2), and 13-63-501 are thus inconsistent with and preempted by Section 230. *See* 47 U.S.C. § 230(e)(3).

VI. PRAYER FOR RELIEF

106. WHEREFORE, Plaintiffs respectfully request that the Court:

a. Declare that Utah Code §§ 13-63-101, 13-63-102, 13-63-103, 13-63-104, 13-63-105, 13-63-202, 13-63-301, 13-63-401, and 13-63-501 are unconstitutional under the First and Fourteenth Amendments of the United States Constitution, and otherwise preempted by federal law, including Section 230 of the Communications Decency Act;

b. Declare that Utah Code §§ 13-63-101 to -701 are void for vagueness under the First Amendment and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution;

c. Declare that Utah Code §§ 13-63-103(1), 13-63-103(2), 13-63-103(3), 13-63-103(5), 13-63-401(2), and 13-63-501 are preempted by the Commerce Clause of the U.S. Constitution.

d. Preliminarily and permanently enjoin Defendants and their agents, employees, and all persons acting under their direction or control from taking any action to enforce the Social Media Act;

e. Enter judgment in favor of Plaintiffs;

f. Award Plaintiffs their reasonable costs and attorneys' fees incurred in bringing this action, under 42 U.S.C. § 1988; and

g. Award Plaintiffs all other relief as the Court deems just and proper.

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