

I. PRELIMINARY STATEMENT

1. This case concerns Utah’s attempt to restrict minors’ ability to engage in protected speech online. After two lawsuits exposed the manifest constitutional flaws in the State’s first effort to restrict online speech, the State repealed and replaced that law with two statutes that are equally (and in some respects, more) problematic. Plaintiffs file this First Amended Complaint to obtain declaratory and injunctive relief from one of those laws: the Utah Minor Protection in Social Media Act.¹ Like its predecessor, the Act purports to aid parental authority, but substitutes that authority with “what the State thinks parents *ought* to want.” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 804 (2011). And like other legislation enacted throughout our nation’s history to protect the sensibilities of young people, the Act erects a prior restraint and imposes a vague and overbroad content-based speech restriction, none of which survives constitutional scrutiny. Unless enjoined, the Act will isolate young adults from their communities, trap some of them in abusive

speech restrictions. It would require age verification for all social platform users in Utah, subjecting *all* of them—not just minors—to intrusive and imperfect age-verification mandates before they can access services that permit the sharing of expression, compromising their privacy and chilling speech. The Act then limits how and with whom minors may communicate and receive content. Any user determined to be under the age of 18—or who declines to submit to age verification—is denied access to recommended content through autoplay and push notification features. These restrictions apply *even if* a parent objects. Under other provisions, minors are

guidance.

10. Plaintiff M.C. is the daughter of Plaintiff Lu Ann Cooper, who pursues this claim on her behalf. M.C. is a high school student who uses social networks to connect with her friends, explore her creative endeavors, and obtain news about current events, history, science, and popular culture. She also uses apps such as Instagram to build community with her dance and debate teams, and fundraise to support these groups. M.C. is particularly passionate about music and dance, and curates her social networking feeds to serve as artistic spaces and connect with other creators.

11. Plaintiff Val Snow lives in Midvale, Utah. He produces a YouTube channel that covers topics such as mental health, resilience, and LGBTQ perspectives. Both teens and adults watch Snow's YouTube channel and have contacted him to engage in community or seek support. Snow, who grew up without access to the Internet or social networks and experienced an assault at a young age, is passionate about protecting at-risk youths' access to information.

12. Plaintiff Utah Youth Environmental Solutions (UYES) is a youth-led grassroots organization that seeks to educate young people in Utah regarding climate change and environmental advocacy. Its mission is to normalize participation in the political process, as well as pragmatically address local environmental issues. UYES operates a program for 14-17 year-olds every summer to educate teenagers about environmental justice and protecting Utah's natural resources while working alongside community partners such as indigenous leaders. It also educates teenagers about practical leadership skills and how to further protect the environment through legislative advocacy and other actions. UYES advertises these opportunities, as well as other resources and information, through social networks, and also communicates with teenagers who are interested in the organization through these channels.

13. Defendant Katie Hass, Director of the Utah Department of Commerce's Division of Consumer Protection, is charged with enforcing the Act. *See* Utah Code § 13-71-301(1), (3).

14. Defendant Sean Reyes, the Utah Attorney General, is charged with representing the Division of Consumer Protection in actions to enforce the Act. *See* Utah Code § 13-71-301(2).

III. JURISDICTION AND VENUE

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after a school shooting killed seventeen people.⁸ Members of UYES used social networks to organize a rally to bring attention to climate change.⁹ And Zoulek consulted Tumblr shortly after the U.S. Supreme Court reversed the *Roe v. Wade* decision to better understand the impact of the ruling. 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.”¹⁰

20. Politicians and lawmakers use social networks to communicate with voters, including teens approaching voting age.¹¹ Social media is “near ubiquitous among members of Congress.”¹² In 2021 alone, congressional representatives published more than 477,000 Twitter (now “X”) and 395,000 Facebook posts.¹³ Senator Mitt Romney regularly posts on social networks, 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),

sphere”¹⁴—used social networks to promote the Act’s repealed predecessor.¹⁵ And his senior advisor and Director of the Office of Families, Aimee Winder Newton, has used social networks to communicate with high schoolers.¹⁶

21. **Education.** Educators use social networks to promote learning and share knowledge, including to “enhance interactions between students, between students and teachers, and with people and resources outside the classroom,” interactions essential to students’ “sense of belonging in an educational community.”¹⁷ Teachers also use social networks to educate adolescents in engaging ways. For example, Phillip Cook (@chemteacherphil) shares chemistry lessons with his 3.9 million TikTok followers. “Ms. James” (@iamthatenglishteacher) posts English grammar and vocabulary lessons on her TikTok account, which has 5.8 million followers. And “Mrs. Kelly” (@the_mrskelly) shares elementary-school-level math lessons with her 1.4 million followers.

22. M.C. uses Instagram to help prepare and refine arguments for her high school debate class by researching opinions and ideas that would appeal to an audience. When Zoulek was in high school, they consulted YouTube to better understand particularly challenging math concepts. And their high school robotics team used Discord, a popular messaging app, to coordinate plans and assignments. Likewise, Snow discovered a vocational rehabilitation service

¹⁴ 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>.

¹⁵ See, e.g., Spencer J. Cox (@GovCox), X (Mar. 14, 2023, 1:06 PM), <https://twitter.com/govcox/status/1635734261604155392>; @GovCox, X (Mar. 23, 2023, 1:58 PM), <https://twitter.com/govcox/status/1639008762987159554>; @GovCox, X (Mar. 23, 2023, 5:20 PM), <https://twitter.com/govcox/status/1639059485569486850>; @GovCox, X (Mar. 27, 2023, 9:26 AM), <https://twitter.com/govcox/status/1640389818151759874>; @GovCox, X (Jul. 12, 2023, 7:43 AM), <https://twitter.com/govcox/status/1679139299017539584>; @GovCox, X (Aug. 3, 2023, 7:57 AM), <https://twitter.com/govcox/status/1687115529516146688>; @GovCox, X (Aug. 3, 2023, 8:25 AM), <https://twitter.com/govcox/status/1687122642032324608>.

¹⁶ Aimee Winder Newton (@AWinderNewton), X (Apr. 24, 2023, 7:13 AM), <https://twitter.com/awindernewton/status/1650503355779764233>.

¹⁷ Kim Ward, *How teachers can use social media to improve learning this fall*, MICH. STATE UNIV., <http://tinyurl.com/2j3k734f> (last visited May 29, 2024).

opportunities for purpose and belonging. Research shows most young adults have been inspired to take on at least one new hobby after viewing clips on social networks, with an estimated four in ten using them to share their own hobbies.²¹ Communities centered around common interests in particular hobbies or skills have also formed on social networks. M.C., for example, uses social networks to connect with and gain inspiration from other dancers, musicians, and artists. Zoulek, meanwhile, uses fan fiction forums to connect with queer youth and read stories reflecting that community's experiences. Reddit subgroups for craft projects, yoga, meditation, baking, and running all have more than 1.8 million members,²² and groups for gardening and woodworking each have more than five million members.²³ This role of social networks in fostering community and connection—what some researchers have called the development of one's "social, religious, cultural, ethnic, sexual and political identities"—is thus one of their most profound contributions.²⁴ Especially since the COVID-19 pandemic, teens increasingly have relied on social networks to connect with peers, access news and information about their communities, express themselves, and share their pursuits and lived experience.²⁵ Teens report that online spaces have "provided them with valued opportunities to meet, exchange and deliberate with peers, decision makers and others who shared their interests."²⁶

26. In this respect, social networks are 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.”²⁷ 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. M.C. uses Instagram to ask for music-making advice from fellow creators.

27. One recent study found teenagers who use social networks reported that they feel

B. Social Networks Provide Particular Benefits to Marginalized and At-Risk Youth

29.

42. Zoulek, Cooper, Christensen, and Snow filed this lawsuit challenging the Social Media Act as unconstitutional on January 12, 2024. NetChoice, LLC, a trade organization, also filed a lawsuit similarly challenging the law on behalf of social network companies. *See NetChoice, LLC v. Reyes*, Case 2:23-cv-00911 (D. Utah 2023). Rather than defend the statute it enacted, the Utah Legislature repealed the Social Media Act and started working on alternative legislation to avoid “run[ning] into ... legal challenges in implementing this bill.”⁴⁴

D. Utah Enacts the Utah Minor Protection in Social Media Act to Replace the Social Media Act.

43. On March 13, 2024, Utah Governor Spencer Cox signed into law the Utah Minor Protection in Social Media Act as a replacement to the Social Media Act. The law takes effect October 1, 2024, when it will become enforceable through administrative or civil actions by the Division of Consumer Protection. *See Utah Code § 13-71-301.*

44. **Scope.** The Act applies to far more services than are traditionally considered “social media,” even though the Act uses the term “social media.” Specifically, the law applies to any “social media company” that “owns or operates a social media service.” Utah Code § 13-71-101(13). A “social media service” is any “public website or application” of *any size* that: (1) “displays content that is primarily generated by” users and not the social media company;

company” is even broader than the original definition in the 2023 Social Media Act, which limited the scope to companies with more than five million users.

45. If allowed to take effect, the Act would restrict or burden access to a wide range of websites and apps that enable Utahns to communicate information, post content, and share ideas.

51. By requiring age-verifying (and residence-verifying) information to access unrestricted social networking accounts, the Act forces users—including adults—either to give up their anonymity and privacy or to endure restrictions on the ability to communicate in this manner. Zoulek believes this provision will harm LGBTQ individuals suc0 (TQZ2r)l80 (ve)4 (s)-111.90 (t)0 (r)2.10se

wishes to speak out on gun control or climate change would not come up in search results on that topic for anyone outside the teen’s existing friend group. This provision would be very problematic for UYES, which heavily relies on Instagram posts, “stories,” and “reels” to convey information and opportunities for engagement with Utah youths interested in environmental science.

57. **Section 13-71-202(1)(e)** requires social media companies by default to “restrict a Utah minor account holder’s direct messaging capability to only allow direct messaging to connected accounts.” This provision hinders minors’ ability to find support and make connections with people outside their existing circle, a key feature of social networks—particularly for vulnerable youth. For example, minors (or adults with non-age-verified accounts) in polygamous communities would be unable to direct message Christensen or Cooper to seek information or resources in potentially leaving abusive homes or obtaining education or employment—without publicly “friending” or “following” them on social networks. Many of these individuals would be highly unlikely to “friend” or “follow” Christensen or Cooper, as doing so would indicate to other community members that they are considering leaving the polygamous community.

58. This provision also prevents minors (or adults with non-age-verified accounts) from

personal information) in order to simply receive the information necessary for the school project.

60. Finally, **Section 13-71-202(5)** of the Act limits the way content may be recommended, promoted, or presented to minors by barring autoplay functions, scroll or pagination features “that load[] additional content as long as the user continues scrolling,” and push notifications. The restriction on push notifications—even if defined clearly (which it is not)—would at minimum prevent Utah minors from receiving time-sensitive updates that can be

autoplay. If Utah minors were prohibited from using these features, it would effectively prevent them from learning about UYES and other educational opportunities. In fact, it would mean their digital world would be restricted to solely engaging with their limited circle of known friends and viewing their content in a yet-to-be-determined stilted fashion that systematically precludes the opportunity for additional exploration.

62. In all of these respects, the Act all but bans the very features that make social networks a valuable tool for communication and civic engagement. In doing so, it suppresses a vast amount of speech and may cause companies to exclude Utah minors from their services altogether.

63. ***Parental consent requirements.*** Except for the mandates contained in Section 13-71-202(5) that cannot be altered *at all*

71-101(8)—from engaging in protected speech across a class of essential communication media unless they not only obtain but establish through vague standards and Byzantine methods their parent’s prior consent. The Act thus preemptively bars these individuals from full access to what the Supreme Court has called “the most important places ... for the exchange of views.” *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017). Its purpose and effect are to limit minors’ rights to express themselves and communicate with other individuals.

65. The effects of such restrictions are significant. Obtaining consent is not feasible for many young people—including, for example, teens in abusive homes or fundamentalist communities whose parents would not provide them access to a forum where they could speak about it; LGBTQ+ youth whose parents do not condone their search for a supportive community; homeless or undocumented youth; and even adolescents whose parents work multiple jobs.⁵² And irrespective of whether any given teenager’s parents ultimately do (or would) provide consent, any mandate that conditions access to speech on seeking such consent inherently violates minors’ speech rights. *Brown*, 564 U.S. at 795 & n.3. For example, UYES works with some teens whose parents hold different views about environmental science—such as regarding climate change—and who may withhold consent to prevent their children from seeking related information. Christensen sees social networking and internet use as a necessary part of her children’s development, as they are growing up in a digital world. She wants them to learn how to use these technologies in a healthy and productive manner, under her guidance, so they are not overwhelmed as adults when they suddenly find themselves with unrestricted access. But the Act imposes certain restrictions regardless of her consent (barring autoplay, scrolling, pagination, and push notifications) and trains her children that the exercise of their fundamental rights is contingent on the approval of others—a form of conditioning that Christensen has seen give rise to abusive power dynamics in the past.

⁵² Kate Murphy, *Utah is the 1st state to limit kids’ access to social media. Experts break down FAQs about new law*, (Mar. 30, 2023), <http://tinyurl.com/5yv224ab>; see also Trevor Project Report, *supra* note 35.

66. Far from empowering parents to choose how to regulate their household’s internet use, the Act’s consent requirement is too vague even to comply with. And it restricts parents’ ability to allow certain content types at all.

67. ***Penalties for violations.*** The Act imposes “an administrative fine of up to \$2,500 for each violation”; a “civil penalty of up to \$2,500 for each violation”; and mandatory fees and costs for the latter. Utah Code § 13-71-301(3)(a)(i), (b)(v), (c). Companies can also be liable for disgorgement, actual damages, and declaratory and injunctive relief. *Id.* § 13-71-301(b). Violating an administrative or court order regarding a prior violation may result in a civil penalty of up to \$5,000 per violation. *Id.* § 13-71-301(4)(a).

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68. 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 2024) (entering TRO to block enforcement of Ohio social media age-verification law). Even where the government’s interest is framed as “helping parents to be the guardians of their children’s well-being,” the First Amendment does not permit “an unbridled license to governments to regulate what minors read and view.” *Interactive Dig. Software Ass’n v. St. Louis Cty., Mo.*, 329 F.3d 954, 959-60 (8th Cir. 2003). The Act substitutes the judgment of government censors for parental discretion. Far from protecting children, the evidence indicates that limiting young people’s access to social networks will harm them and deprive them of fundamental rights.

V. CLAIMS FOR RELIEF

69. Utah’s first attempt to restrict access to social network services via the Social Media Act suffered from obvious constitutional flaws and was quickly repealed once challenged. Not only did the law condition access by all Utahns to a vital communications medium, it ignored the fact that “[m]inors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of

speech. The Act's provisions, both as a whole and in their individual manifestations, impose significant restrictions that cannot survive any level of First Amendment scrutiny.

72. **Prior restraint.** The Act imposes statutory preconditions on access to social networks, thus limiting all Utah's ability to access important sources of information and social interaction. *Packingham*, 582 U.S. at 107. The Act imposes a series of prior restraints that "forbid[] certain communications" before they "occur," *Alexander v. United States*, 509 U.S. 544, 550 (1993) (emphasis omitted) (cleaned up), by restricting how services are designed and by imposing preconditions on accessing them. It matters not pos 72 556vm

push notifications, *see id.* § 13-71-202(5), deprive individuals of their ability to choose how to engage in and display expression. Websites may use autoplay when expression lends itself to being viewed sequentially, such as episodes of a travel log or dance choreography. Seamless pagination is an effective—often the most effective—way of displaying and viewing the enormous amounts of content on many “social media websites” under the Act.

77. And notifications inform users about things they may wish to know or opt into, such as announcements or suspicious login attempts. In these ways, the Act restricts *without exception*—including parental consent—the content teenagers may share, access, and receive through social networks, and with whom they may communicate. The Act’s blanket restrictions against communication, messaging, access, and discoverability beyond connected accounts, *id.* § 13-71-202(1)(b), (d), (e), likewise presumptively bans swaths of speech without regard to whether the speech at issue is protected or subject to legitimate regulation, thus regulating substantially more speech than the State may legitimately regulate.

78. Prohibiting autoplay, infinite scroll, and push notifications would effectively require the most popular social platforms to either ban minor users or create an entirely new version of the application for such users, stripped down to prevent any true ability to learn from or connect with accounts outside their limited communities.

79. ***Anonymous speech.*** By imposing age verification as a condition of access to social networks, the Act violates the First Amendment rights of all Utahns, minors and adults alike. To reiterate: In response to the Act’s requirement of an “accuracy rate of at least 95%,” Utah Code § 13-71-101(2), many if not most covered websites will request users’ proof of age. Many Utahns who do not wish to share their personal information to use social networks will have to choose between open access to information and relinquishing privacy. The Supreme Court and other courts have repeatedly struck down similar identification requirements as unconstitutional. *See, e.g., Ashcroft v. ACLU*, 542 U.S. 656, 667, 673 (2004); *ACLU v. Mukasey*, 534 F.3d 181, 196-98 (3d Cir. 2008). Zoulek, Cooper, and Snow feel so strongly about protecting their identities and data privacy that they would prefer to accept the Act’s severely restricted form of social networks

scrutiny. *See Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2346-47 (2020). The law is also subject to strict scrutiny because it singles out and selectively burdens social network users (Utah Code § 13-71-101(1), (16)) and minors (*id.* §§ 13-71-101(8), (17), 201, 202, 203, 204),

87.

COUNT THREE

VIOLATION OF THE COMMERCE CLAUSE

91. Plaintiffs incorporate all prior paragraphs of the Complaint.
- 92.

located in Utah.

continuous pagination, or push notifications; and Section 13-71-101(18) for publishing content to minors without “advance notice,” an undefined term.

102. Plaintiffs suffer injuries from these preempted provisions because they compel social networks to block (collaterally censor) Plaintiffs’ speech and access to speech, the precise

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

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