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Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs Hannah Paisley Zoulek, Jessica Christensen, Lu Ann Cooper, M.C. (a minor), Val Snow, and Utah Youth Environmental Solutions, by and through their counsel, submit this Motion for Preliminary Injunction and Memorandum of Law in Support, along with their declarations, and the declaration of Ambika Kumar and accompanying exhibits. Plaintiffs seek to preliminarily enjoin enforcement of the Utah Minor Protection in Social Media Act, SB 194, on the grounds that it is invalid under the United States Constitution and preempted. Plaintiffs are likely to succeed on the merits of their claims, and the other preliminary injunction factors likewise counsel in favor of granting Plaintiffs' motion.

Plaintiffs also respectfully request a hearing on this motion.

Dated: May 31, 2024

/s/ *Ambika Kumar*
Ambika Kumar
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TABLE OF AUTHORITIES

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Federal Cases

ACLU v. Johnson,
4 F. Supp. 2d 1029 (D.N.M. 1998), *aff'd*, 194 F.3d 1149 (10th Cir. 1999) 11, 22, 24

ACLU v. Mukasey,
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Alario v. Knudsen,
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Ams. for Prosperity Found. v. Bonta,
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Animal Legal Def. Fund v. Kelly,
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Ashcroft v. ACLU,
542 U.S. 656 (2004).. *passim*

Ashcroft v. Free Speech Coal.,
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Awad v. Ziriax,
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Bantam Books, Inc. v. Sullivan,
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Barr v. Am. Ass'n of Pol. Consultants, Inc.,
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Bigelow v. Virginia,
421 U.S. 809 (1975)..23

Boos v. Barry,
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Brewer v. City of Albuquerque,
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Brown v. Ent. Merchs. Ass'n,

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Hobby Lobby Stores, Inc. v. Sebelius,
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Interstate Circuit, Inc. v. City of Dallas,
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Leavitt v. Jane L.,
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Mahanoy Area Sch. Dist. v. BL,
594 U.S. 180 (2021)....................11

Matal v. Tam,
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McCraw v. City of Oklahoma City,
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Pike v. Bruce Church, Inc.,
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Playboy Ent. Grp., Inc. v. United States,
529 U.S. 803 (2000)....................15, 17, 18, 19

PSINet, Inc. v. Chapman,
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Reed v. Town of Gilbert, Arizona,
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Reno v. ACLU,
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Sam Francis Found. v. Christies, Inc.,
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Snyder v. Phelps,
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Sorrell v. IMS Health Inc.,
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Turner Broad. Sys., Inc. v. FCC,
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United States v. Stevens,
559 U.S. 460 (2010)....................12, 14

Verlo v. Martinez,
820 F.3d 1113 (10th Cir. 2016)....................8

Whole Woman's Health v. Jackson,
595 U.S. 30 (2021)....................6

Wyo. Gun Owners v. Gray,
83 F.4th 1224 (10th Cir. 2023)....................12

State Cases

Salt Lake City v. Int'l Assn. of Firefighters,
563 P.2d 786 (Utah 1977)....................25

Federal Statutes

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State Statutes

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I. PRELIMINARY STATEMENT AND GROUNDS FOR RELIEF

Second, the Act violates the Commerce Clause. States cannot impose burdens on interstate commerce that exceed a law's putative local benefits and cannot regulate commerce that occurs wholly out of state. The Act does both. By presumptively barring other states' residents from communicating with certain Utahns, including Plaintiffs, the Act disproportionately burdens commerce. By applying to all Utah residents, even those in other states, the Act regulates outside the State's borders.

Plaintiffs have demonstrated the remaining elements required for preliminary injunctive relief: They will suffer immediate and irreparable harm absent an injunction, and the public interest and balance of equities favor the injunction of an unconstitutional law. An order preliminarily enjoining enforcement of SB 194 is warranted.

II. BACKGROUND

A. Social Networks Provide Teens and Adults a Forum for Expression and Association and a Source of Valuable Information.

About ninety percent of Americans ages 13 to 17 use social media. Declaration of Ambika Kumar ("Kumar Decl."), Ex. 1 at 2. Teens use social networks to engage in politics, education, community, and other expression. Plaintiff and high school student M.C., for example, uses Instagram to research arguments for her high school debate class and find inspiration from other young performers. Declaration of M.C. ("M.C. Decl.") ¶ 5. Plaintiff Hannah Paisley Zoulek, a recent high school graduate, used the app Discord to coordinate plans and assignments with their school's robotics team. Declaration of Hannah Paisley Zoulek ("Zoulek Decl.") ¶ 7. Plaintiff Lu Ann Cooper and her nonprofit, Hope

educate young people about climate change and environmental advocacy. Declaration of Utah Youth Environmental Solutions ("UYES Decl.") ¶ 4.

Social networks enable youth to find opportunities for community, belonging, and personal expression—and increasingly since the pandemic, to connect with peers, access information, express themselves, share experiences, and seek support. *See* Kumar Decl., Ex. 2. Plaintiff Val Snow uses YouTube to share his perspectives on mental health, positivity, and the LGBTQ experience. Declaration of Val Snow ("Snow Decl.") ¶ 7. UYES's minor members use social networks to encourage participation in the political process and advocate solutions to local environmental issues. UYES Decl. ¶ 3. And Zoulek uses Tumblr to find other disabled and neurodivergent individuals. Zoulek Decl. ¶ 4. Zoulek testified before the Legislature that preventing teens from using social media to talk about mental health would harm mental health. *Id.* ¶ 10.

Many vulnerable teens use social networks for support. For example, kids in certain polygamous communities use them to flee compelled polygamous marriages, forced labor, or both. Christensen Decl. ¶¶ 6-9. Plaintiff Jessica Christensen, a social worker and former member of such a community, has helped at least thirty people (including about ten minors) escape abusive polygamous homes after they contacted her through Facebook or Instagram. She estimates that more than 100 individuals (including about thirty minors) have contacted her for support, information, or resources. *See id.* ¶ 6. Christensen has also witnessed situations in which minors' online posts prompted wellness checks. *Id.* ¶ 21. Cooper has counseled teens and adults who sometimes find her organization, Hope After Polygamy, through social networks. Cooper Decl. ¶ 6.

Anonymity can be critical. Many individuals who contact Christensen and Cooper

HB 464 provides a private right of action for causing “adverse mental health

The Act is invalid under the First Amendment because it (1) imposes a series of unlawful prior restraints, (2) is vastly overbroad, and (3) regulates speech based on its content and speaker, without being sufficiently tailored to its goals.

1.

(4th Cir. 2004) (ID rules "may deter adults" from accessing speech); *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 99 (2d Cir. 2003) (same); *ACLU v. Johnson,* 4 F. Supp. 2d 1029, 1033 (D.N.M. 1998), *aff'd*, 194 F.3d 1149 (10th Cir. 1999) (same); *NetChoice, LLC v. Bonta*, -- F. Supp. 3d --, 2023 WL 6135551, at *8 (N.D. Cal. 2023) (plaintiffs likely to prevail on argument that age verification restricts access to speech), *appeal filed*, No. 23-2969 (9th Cir. Oct. 23, 2023) .

Content-Sharing Restrictions. The Act's content-sharing restrictions add layers of prior restraint against even those minors willing to provide ID, as they presumptively bar minors from sharing content or direct messaging with anyone not already "connected" to them, *see* Utah Code § 13-71-202(1)(b), (e), effectively limiting them to communicating with those in their immediate circle. But the government may not prevent a minor from using an expressive medium to communicate with those it deems unsuitable. *See Neb. Press Ass'n*, 427 U.S. at 570 (gag orders are prior restraints); *Dixon v. Kirkpatrick*, 553 F.3d 1294, 1308 (10th Cir. 2009) (recognizing same). *Cf. Mahanoy Area Sch. Dist. v. BL*, 594 U.S. 180, 190-94 (2021). The possibility that a parent may consent to their child's broader ability to communicate via social networks does not save the Act. *See*, *e.g*., *Brown*,

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 omitted). Because the Act restricts speech regardless whether it is unprotected and legitimately regulable, the Act is facially invalid under the overbreadth doctrine.[2]

Overbreadth as to minors. "Minors are entitled to a significant measure of First

indecency or "harmful" speech); *see also Butler*, 352 U.S. at 383-84 (ban on material "tending to the corruption of the morals of youth"); *Playboy Ent. Grp., Inc. v. United States*, 529 U.S. 803, 812 (2000) (cable TV regulation that applied "regardless of the presence or likely presence of children"); *Mukasey*, 534 F.3d at 207 (law that "effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another").

3. The Act's content-based restrictions fail any level of First Amendment scrutiny.

The Act is also an unconstitutional con

It makes no difference that the State has tried to accomplish this goal by restricting *with whom* and *how* minors communicate. *See*

however, do not amount to "incontrovertible proof of a causal relationship." *Ent. Software Ass'n v. Swanson*, 519 F.3d 768, 772 (8th Cir. 2008).

The lack of evidence in the legislative record is unsurprising, as the U.S. Surgeon General and other experts have concluded that access to social media also provides *benefits* to young people. *See* Kumar Decl., Ex. 3 at 6; *see also id*., Ex. 15 at 3. This is consistent with Plaintiffs' experiences. *See* Zoulek Decl. ¶¶ 4, 7-8; Christensen Decl. ¶¶ 18-19; Snow

how the Act's restrictions and exclusions can satisfy First Amendment scrutiny, and its underinclusivity is equally fatal. *Brown*, 564 U.S. at 802.

c. The Act fails even intermediate scrutiny.

A speech restriction survives intermediate scrutiny only if the government proves the law (1) will "in fact" serve a "substantial" interest "unrelated to the suppression of free

companies will need to collect data from *all* users.

VI. THE LAW MUST BE ENJOINED IN ITS ENTIRETY

"[E]ven where a savings clause exists, where the provisions of the statute are interrelated, it is not within the scope of the court's function to select the valid portions of the act and conjecture that they should stand independently of the portions which are invalid." *Leavitt v. Jane L.*, 518 U.S. 137, 140-41 (1996); *see also Salt Lake City v. Int'l Assn. of Firefighters*, 563 P.2d 786, 791 (Utah 1977) (entire statute invalid where challenged provisions were "an integral part of the act, which cannot be severed without interfering with the underlying legislative purpose"). Here, the Act's definition of "social media" and its age-verification scheme are invalid. These provisions permeate the Act and are "so interwoven with the remainder of the statute" that "other portions of the Act cannot stand alone." *Murphy v. Matheson*, 742 F.2d 564, 578 (10th Cir. 1984).

VII. CONCLUSION

Plaintiffs respectfully request an order preliminarily enjoining enforcement of the Act.

Dated: May 31, 2024

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