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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

HANNAH PAISLEY ZOULEK, a Utah resident; JESSICA CHRISTENSEN, a Utah resident; LU ANN COOPER, a Utah resident; M.C., a Utah resident, by and through her parent, LU ANN COOPER; VAL SNOW, a Utah resident; and UTAH YOUTH ENVIRONMENTAL SOLUTIONS, a Utah

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Candace L. Odgers and Michaeline R. Jensen, Annual Research Review: Adolescent mental health in the digital age: facts, fears, and future directions, 61:3 J. OF C

I. INTRODUCTION

The State s entire defense of the Minor Protection in Social Media Act is based on false premises. It assumes the government may restrict communication via social networks whether or not the hobbled speech falls into traditionally regulable categories, and that it may requireall users (whether adults or children) to prove their age before accessing and engaging in unfettered speech because children are different than adults. Def. s Mem.

regulation of social media and the actual research evidence to support such claims. Decl. of Dr. Christopher Ferguson, PhD ¶¶ 46-47 (Ferguson Decl.). As the Supreme Court held in Brown

(b), (d), and (e) presumptively bar minors from communicating with unconnected accounts, unless their parents consent (Opp. 8, 28, 35); and that the ***content presentation restrictions*** in Utah Code § 13-71-202(5) ban minors from accessing and disseminating speech through autoplay functions, continuous feeds, and push notifications, even with parental consent (Opp. 9, 20).

without adjudication of the First Amendment s application to the barred expression. See, e.g., Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963).

The State incorrectly asserts that prior restraints are confined to administrative and

(1979).[4] The State does not contend either the age verification or content-sharing provisions could possibly satisfy that standard, which requires showing the provisions supply the only means to address a direct, immediate, and irreparable interest of the highest magnitude. N.Y. Times Co. v. United States, 403 U.S. 713, 730 (1971) (Stewart, J., concurring); id.

Amendment. NRA of Am. v. Vullo, 602 U.S. 175, 180-81, 188-91 (2024); see also, e.g. Backpage.com, LLC v. Dart, 807 F.3d 229, 235-36 (7th Cir. 2015) (Posner, J.) (invalidating informal prior restraint executed through threats to third-parties).

That is precisely how the age-verification and content-sharing provisions operate: they threaten social media services with civil penalties if they allow users to engage in communications the Act forbids. Threatening penalties for future speech goes by the name of prior restraint. Backpage.com, 807 F.3d at 235 (citation omitted). And the social networks Plaintiffs use have testified that this threat of liability will require them to enforce the State s censorship against users like Plaintiffs going forward. See NetChoice, LLC v. Reyes, No. 2:23-cv-00911, Dkt. 52-3 (D. Utah) (Davis Decl. ¶ 56) (users who refuse to age-verify will not be able to use Facebook or Instagram to make social connections; showcase their creative talents; gather information ; or engage in any number of other potential uses of these services); id.

does not expand the State s power to restrict speech or lighten its burden of proof. Laws that defin[e] regulated speech by its function or purpose, as the Act does in Utah Code § 13-71-101(14), are content based on [their] face [and] subject to strict scrutiny regardless of the government s benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech. Reed, 576 U.S. at 163-65 (citation omitted); see also Barr v. Am. Ass'n of Pol. Consultants, Inc., 591 U.S. 610, 618 (2020) (Mot. 16). Regulations like the Act, designed to shield an audience s psychological wellbeing from the direct impact of speech, are likewise content-based not time, place, or manner restrictions akin to abating the nuisance of a loudspeaker or protecting neighborhood aesthetics from gaudy signage. Boos v. Barry, 485 U.S. 312, 321 (1988) (Mot. 16) (rejecting this contention); see also Playboy, 529 U.S. at 811-12 (citing same); cf. Opp. 2, 11, 26-27. And even more important, the Act prevents minors from speaking to others, making the restrictions on expression all the more oppressive.

The State s bald proclamations of content neutrality are no help. A neutral law barring minors from entering libraries to prevent overindulgent reading, for example, would be agnostic as to content but subject to strict scrutiny. See Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 800 (1985) (speakers can be excluded from a public forum only when the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest). So would a law prohibiting an adult from speaking to a minor at a mall (or a minor from addressing an adult) for any purpose without parental consent. See Brown, 564 U.S. at 795 n.3 (government lacks power to prevent children from hearing or saying anything without their parents' prior consent"). Strict scrutiny applies to such blanket prohibitions on certain speech. Cf. id.

of Schaumburg v. Citizens for a Better Env’t

unprotected obscenity the Supreme Court has repeatedly held that even this kind of age

an argument the Supreme Court expressly rejected in Bruen—that lesser scrutiny applies

Court as it should applies that standard. See Citizens for Responsible Gov't PAC v. Davidson, 236 F.3d 1174, 1199 (10th Cir. 2000) (invalidating speech restriction where Colorado made no attempt to satisfy applicable strict scrutiny); Mot. 17-20 (applying Brown, 564 U.S. at 799-805).

The State has also failed to carry its burden to show the challenged provisions survive intermediate scrutiny. The State s analysis omits several critical elements of the intermediate scrutiny standard, asserting the correct legal test is solely whether the

communication as part of the overall tailoring requirement. See McCullen v. Coakley, 573 U.S. 464, 477 (2014) (citation omitted) (Mot. 21).

The Act s challenged provisions satisfy none of these elements.

a. Conjectural and censorial government interests

The putative government interests advanced in the Opposition are conjectural and directly related to the suppression of expression. See Turner, 512 U.S. at 662, 664.

high-technology adopting countries in Europe or the Anglophone sphere, and that other factors within the U.S. actually provide better explanations for youth mental health trends than does social media used. *Id.* ¶¶ 9-32 (reviewing data revealing these causal defects); see also id. ¶¶ 33-41 (even finding inconsistent evidence of correlation).[9]

The State's effort to avoid heightened scrutiny by claiming it seeks only to reduce the amount of time minors devote to social networks (Opp. 26) betrays that its asserted interest is related to the suppression of protected expression. Restricting speech because it is too engaging is directly related to the suppression of expression. *See Turner*, 512 U.S. at 664. Like the interactive features of video games that California sought to regulate in *Brown*, the Act's content presentation restrictions ban the use of features like autoplay, push notifications, and continuous scroll distinctive to the medium

permit it to quiet the speech that medium carries, no more than it could suppress page-turner novels, Taylor Swift albums, or binge-worthy television. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 578 (2011). Where a challenged regulation's purpose is related to the suppression of expression, the regulation is invalid regardless of what level of scrutiny applies. *See Moody*, 144 S. Ct. at 2407.

26. This omits or downplays those aspects of online communication the Act does restrict, which are precisely the limitations on speech Plaintiffs challenge.[10] What is missing is any evidence given all the things minors are still permitted to do that the challenged provisions will have any beneficial effect at all. The State may hope that, with the challenged restrictions, minors might participate in other important and essential things, like schoolwork, sleep, exercise, and real-life social relationships, Opp. 2, but it offers no evidence that they will do so. Cf. Brewer, 18 F.4th at 1235.[11]

Bottom line, whether the issue is the general availability of smartphones, time spent elsewhere online (such as streaming media), or unregulated social network activities, the State has not met its burden to show how the challenged provisions will have any positive benefit whatsoever. That not only fails strict scrutiny, Brown, 564 U.S. at 802, but any level of First Amendment review. See Greater New Orleans Broad. Ass'n, Inc. v. United States, 527 U.S. 173, 193 (1999) (banning private casinos from advertising failed intermediate scrutiny where tribal casinos remained free to advertise); Rubin v. Coors

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[10] The State admits that the content-sharing restrictions prevent minors to see and be seen by strangers without parental permission, Opp. 26, and that a plaintiff like M.C. would not be able to share her art with unconnected accounts without parental consent. Id. 27-28. And of course the various features the content-presentation provisions ban for minors accounts (auto play, infinite scroll, and notifications) cannot be restored with parental consent. Id. 9 (requiring social media companies to remove the addictive elements from their platforms). These restrictions, in conjunction with the predicate age verification mandate, are the basis of Plaintiffs First Amendment injuries. See M.C. Decl. ¶¶ 9-12; Zoulek Decl. ¶¶ 12-16; Johnson Decl. ¶¶ 5-11.

[11] The State cites some studies suggesting that reducing the amount of time college students on social networks increases general happiness. See Opp. 16 (citing Twenge Decl. ¶¶ 48-53). But this says nothing about the age group covered by the Act, or whether banning features such as autoplay, infinite scroll, or push notifications, or restricting how and with whom minors may communicate, would actually improve that age group's mental health. See Ferguson Decl. ¶¶ 30-32 (explaining that Dr. Twenge's cited studies suffer

ostensibly privacy protection because they allow young people to communicate with adults without parental permission off social networks. Id. 36.

These contentions miss the mark. A law is not narrowly tailored just because the government claims to leave open some other channels for communication. See, e.g. McCraw

d. No adequate alternatives.

Even if the State had met its burden on these elements, the challenged provisions would fail because they do not leave open adequate alternatives. The State disagrees, asserting that minors may still communicate without restriction by phone and email. Opp. 36. But the State submits no evidence that these media are adequate alternatives; fails to rebut testimony explaining that they are not, *see* Christensen Decl. ¶ 11; Johnson Decl. ¶¶ 4, 6; Zoulek Decl. ¶ 19; and admits that "[s]ocial media is different than other forms of media" in material ways. Opp. 37. This, too, is fatal to the State's defense. *See McCraw*, 973 F.3d at 1061, 1079-80 (citing *McCullen*, 573 U.S. at 490).

4. The challenged provisions are each facially overbroad.

Moody affirmed that a challenged regulation is overbroad and facially invalid under the First Amendment if it "prohibits a substantial amount of protected speech relative to its plainly legitimate sweep." 144 S. Ct. at 2397 (citation omitted); *accord* Mot. 11-12 (same).

This "less demanding" standard for facial invalidity "provides breathing room for free expression." *Moody*, 144 S. Ct. at 2397. It requires a federal court to strike down a regulation with some legitimate applications where its unconstitutional applications substantially outweigh its constitutional ones. *Id.* What matters are "the principal things regulated." *Id.* at 2398. Courts must only consider a regulation's "range of realistic

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placement provision because cigarettes are carcinogenic goods not speech or media and Massachusetts could permissibly regulate the placement of tobacco products for

applications, and determine whether its unconstitutional applications are substantially disproportionate to [its] lawful sweep. United States v. Hansen, 599 U.S. 762, 770 (2023); see also United States v. Williams, 553 U.S. 285, 301 (2008) (refusing to consider implausible applications in facial analysis). When the substantial effect of a challenged regulation is to restrict protected speech, the regulation is facially invalid. See, e.g., United States v. Stevens, 559 U.S. 460, 482 (2010) (invalidating law prohibiting depictions of harm to animals even if a version limited to some depictions would be constitutional).

This is not a case like Moody where some applications of the challenged provisions might be valid because it is conceivable they could primarily apply to non-expressive conduct as opposed to protected speech. Cf. Moody, 144 S. Ct. at 2398-99. To the contrary, and as the State readily concedes, Opp. 9, 11, 20, application of the challenged provisions here necessarily regulates speech by restricting Utahns rights to access and use social networks.

Consider each of them. First, the age-verification mandate requires all Utahns to hand over personal identifying information before they can engage in speech (i.e., access and use social networks). See Utah Code §§ 13-71-201(1), 13-71-101(2). Because a social networking service is a medium for communication, the only possible application of that provision is to restrict speech. See Packingham, 582 U.S. at 108 (restricting access to social networ

(e). Any application of these provisions also restricts speech. *See Brown*, 564 U.S. at 794-95 & 795 n.3 (minors have a right to engage in speech without state-ordered parental consent). And third, the content-presentation provisions restrict speech because they not only ban how speech may be presented to minors, *see Moody*, 144 S. Ct. at 2393 (choices about what third-party speech to display *and* how to display it are protected speech) (emphasis added), but restrict the types of interactive media with which minors may engage, *see Brown*, 564 U.S. at 794-95 (citations omitted).

The only even potentially legitimate applications of the challenged provisions thus concern instances where they *just happen* to prevent or restrict some type of unprotected and thus legitimately regulable speech such as defamation, true threats, incitement, or obscenity. *See Stevens*, 559 U.S. at 460. Such hypothetically valid applications comprise only a small slice of the total volume of anodyne and fully protected speech transmitted through social networks (and in particular through these restricted features). *See Brown*, 564 U.S. at 790-91 (recognizing that these exceptions represent well-defined and narrowly limited classes of speech) (citation omitted). The State may not torch a large segment of the internet to protect minors from such a small subset of the expression that is communicated through these platforms. *Reno*, 521 U.S. at 882; *see* Mot. 14-15.

Because each of the challenged provisions by nature restricts and chills substantially more speech than the State may legitimately regulate, they are each facially invalid under the First Amendment. *See also* Pls. Supp. Br. (filed concurrently herewith).

B. The Act Violates the Commerce Clause.

The State does not meaningfully contest that the challenged provisions violate the

137, 142 (1970) and (ii) directly regulating activities wholly outside the State by restricting how Utah legal residents may use social networks even outside the State s borders in violation of the rule applied in *Edgar v. MITE Corp.*, 457 U.S. 624, 641 (1982), and sustained in *National Pork Producers Council v. Ross*, 598 U.S. 356, 376 n.1 (2023).

Instead, the State opposes Plaintiffs motion for preliminary injunction under the Commerce Clause by moving to dismiss it. *See* Opp. 37; MTD 3-7. But Plaintiffs have not only alleged facts, they have also presented unrebutted evidence establishing their entitlement to relief and standing to bring this claim. The State s dismissal arguments misread *National Pork*, which affirmed both the heartland *Pike* cases that seek to protect the instrumentalities of interstate commerce, as well as the variety of extraterritoriality claim at issue here, which implicates principles of horizontal separation of powers. 598 U.S. at 376 n.1, 379 n.2, 389 n.4. This mistake also dooms the State s prudential standing argument, which hinges on the same misreading.

The Court should deny the State s Motion to Dismiss and conclude that Plaintiffs are also likely to succeed on the merits of the Commerce Clause claim.

1. The State does not meaningfully contest that the Act violates the Commerce Clause in the two challenged respects.

The State s principal argument posits that a Commerce Clause claim fails unless it demonstrates that a challenged regulation discriminates against out-of-state commerce on its face or in its effect. *See* MTD 5. That is mistaken. Commerce Clause claims come in three varieties, only one of which requires proof of out-of-state discrimination. *Energy & Env't Legal Inst. v. Epel*, 793 F.3d 1169, 1171 (10th Cir. 2015) (Gorsuch, J.). The Supreme Court s decision in *National Pork* confirms that even *non-discriminatory* regulations violate the Commerce Clause if they (i) substantially and unduly burden the

instrumentalities of interstate commerce, or (ii) regulate commercial activity wholly beyond their borders. See 598 U.S. at 376 n.1, 379 n.2, 389 n.4. The Act does both.

The State s remaining arguments also fail.

First

challenging Montana's TikTok ban were likely to succeed on the merits of their Pike claim for this reason).

Rather than meet Pike's test, the State argues only that National Pork abrogated Pike. MTD 4-6. Absolutely not. The Supreme Court made clear that heartland Pike applications to the "instrumentalities" of interstate commerce like internet services remains good law. Nat'l Pork, 598 U.S. at 389 n.4; see also id. at 403 (Roberts, C.J., concurring in part) ("six Justices of this Court affirmatively retain the longstanding Pike balancing test"); id. at 403 (Kavanaugh, J., concurring in part) (stating same). And so did the Tenth Circuit in a recent decision rejecting the same contention. See Forever Fencing, Inc. v. Bd. of Cnty. Comm'rs of Leavenworth Cnty., 2024 WL 3084973, at *3 (10th Cir. June 21, 2024).

Second, the State cannot refute that the challenged provisions separately violate the Commerce Clause by regulating speech and internet communications wholly outside Utah's borders. The Commerce Clause does not permit laws that "directly regulate[] transactions which take place wholly outside the State." Edgar, 457 U.S. at 641; accord Nat'l Pork, 598 U.S. at 376 n.1. And as the State concedes, because the Act has no geographic limitation, it restricts the communications of Utah residents even while they are outside the State. See Utah Code § 13-71-101(16); FAC ¶ 95. This means college students like Zoulek continue to be subject the Act's challenged provisions even while outside Utah, as does anyone who holds a valid Utah driver's license or spends more than six months of the year in Utah. See id.

all social network users. *See NetChoice, LLC*, *supra*, Dkt. 52-5 (Paolucci Decl. ¶¶ 9-10). And because the Act applies to residents while traveling outside of Utah, the challenged provisions also regulate communications wholly outside of Utah involving non-residents.

Such extraterritorial regulations are barred by the principle applied in *Edgar*, 457 U.S. at 641-42 (regulated transactions took place wholly outside the regulating state for Commerce Clause purposes where the regulating state's only claimed nexus to the regulated transaction was the legal residency of a source of the capital involved). The State's only response is to mischaracterize Plaintiffs' claim as one asserting the per se rule *National Pork* foreclosed. But *National Pork* affirmed the Commerce Clause still bars that

At the outset, the argument rests on dubious footing. The Supreme Court has questioned a federal court s power to decline jurisdiction over an otherwise justiciable claim on prudential, rather than constitutional standing grounds, Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 125-26 (2014), and thus the continuing vitality of prudential standing doctrines in light of a federal court s virtually unflagging obligation to hear and decide cases within its jurisdiction, Susan B. Anthony List v. Driehaus, 573 U.S. 149, 167 (2014) (quotation omitted). In its most recent statement on the issue, the Court clarified that the label prudential standing [is] misleading because the requirement at issue is in reality tied to a particular statute and not any constitutional rule. Bank of Am. Corp. v. City of Miami, Fla., 581 U.S. 189, 196 (2017) (emphasis added). Neither the Supreme Court nor the Tenth Circuit has ever applied a prudential filter to deny Commerce Clause plaintiffs who satisfy Article III their day in court.

But even assuming prudential standing principles were both valid and applicable to plaintiffs raising federal constitutional claims, the State s argument would fail as it rests on the same misreading of National Pork that doomed its arguments on the merits. Where it applies, the prudential standing doctrine merely requires a plaintiff s injuries to arguably fall within the zone of interests protected or regulated by the statutory provision or, the State contends, constitutional rule invoked in the suit. Bd. of Cnty. Comm'rs of Sweetwater Cnty. v. Geringer, 297 F.3d 1108, 1111-12 (10th Cir. 2002) (citation omitted). The inquiry is not meant to be especially demanding, Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 567 U.S. 209, 225 (2012).

Plaintiffs plainly meet this standard. They have shown that the challenged provisions burden how and with whom Plaintiffs may communicate across state lines,

including for commercial purposes, and subject Plaintiffs and anyone who wishes to communicate with them to the same onerous regulation even when they leave the State. *See* FAC ¶¶ 65-66 (describing the Act's significant restrictions on Plaintiffs' ability to access out-of-state digital content); Mot. 8-11, 22-23 (same). Plaintiffs' interests fall squarely within the protections of the Commerce Clause's prohibition against excessive and extraterritorial burdens on the instrumentalities of interstate commerce. *See Nat'l Pork*, 598 U.S. at 376 n.1, 379 n.2, 389 n.4. The State does not dispute this, and instead repeats its argument that *National Pork* abrogated these protections. *See* MTD 4-5. But that is wrong for the reasons addressed above.

The State's only other authority supports Plaintiffs. In *Cibolo Waste*, the Fifth Circuit rejected a purely intrastate waste management company's Commerce Clause challenge to a city permit fee for waste collection. 718 F.3d at 475. But as the State acknowledges, even *Cibolo* held that a plaintiff's claims falls within the Commerce Clause's zone of interest where it turns on how a challenged regulation excessively burdens their out-of-state interests. *Id.* Plaintiffs have an interest in communicating with persons out-of-state. Because the challenged provisions burden their ability to do so, it meets even this standard.

III. THE REMAINING FACTORS FAVOR A PRELIMINARY INJUNCTION

The Opposition confirms that the remaining injunction factors are satisfied here.

Because the loss of constitutional rights for even a limited amount of time is always irreparable, the State does not contest that Plaintiffs would

The balance of equities and the public interest also support an injunction. Citing no evidence, the State points to the alleged harms of leaving social networks unregulated. But it ignores well-established precedent that states do[] not have an interest in enforcing a law that is likely constitutionally infirm, Chamber of Com. of U.S. v. Edmondson, 594 F.3d 742, 771 (10th Cir. 2010), such that [a] governmental interest in upholding a mandate that is likely unconstitutional does not outweigh a movant's interest in protecting his constitutional rights, Pryor v. Sch. Dist. No. 1J, 99 F.4th 1243, 1254 (10th Cir. 2024). For this reason, and because it is always in the public interest to prevent the violation of a party s constitutional rights, id. at 1254 (citation omitted), these factors favor a preliminary injunction. See also Pac. Frontier v. Pleasant Grove City, 414 F.3d 1221, 1237 (10th Cir. 2005) (Vindicating First Amendment freedoms is clearly in the public interest.).

IV. THE STATE CONCEDES THE ACT IS NOT SEVERABLE

The State does not rebut Plaintiffs contention that invalidation of the challenged provisions requires invalidation of the entire Act because the challenged provisions are not severable. See Mot. 25. This is a dispositive concession. See Bishop v. Smith, 760 F.3d 1070, 1094-95 (10th Cir. 2014) (failure to argue severability was waiver); accord Awad v. Ziriax, 670 F.3d 1111, 1132 n.16 (10th Cir. 2012). The whole Act must be enjoined.

V. CONCLUSION

Plaintiffs respectfully request an order granting their motion for preliminary injunction and denying the State s motion to dismiss.

Dated: July 26, 2024

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