



HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

S166/2025

BETWEEN:

REDDIT, INC.

Plaintiff

and

COMMONWEALTH OF AUSTRALIA

First Defendant

MINISTER FOR COMMUNICATIONS

Second Defendant

**PROPOSED SUBMISSIONS OF NETCHOICE AND
ELECTRONIC FRONTIER FOUNDATION**

Part I Certification

1. These submissions are in a form suitable for publication on the Internet.

Part II Basis for leave to be heard as *amici curiae*

2. NetChoice and the Electronic Frontier Foundation (EFF) seek leave to be heard as *amici curiae* on the question whether Pt 4A of the *Online Safety Act 2021* (Cth) is invalid because it impermissibly burdens the implied freedom of political communication. By these proposed submissions, NetChoice and EFF submit that the question presented should be answered in the affirmative and support the relief sought by the Plaintiff.

Part III Why leave should be granted

- 10 3. NetChoice is a United States-based trade association for Internet and social media companies. Its members include the operators of Facebook, Instagram, Threads, Twitch, TikTok, Reddit, Snapchat, X and YouTube—all platforms that the eSafety Commissioner contends meet the definition of “age-restricted social media platforms” in s 63C of the Act (SC [42]). NetChoice’s mission is to promote online commerce and speech and to increase consumer access and options through the Internet.¹
4. NetChoice has challenged social media restrictions in courts across the United States, including the Supreme Court and federal courts.² NetChoice is or has been a party to successful challenges to most of the United States statutes identified in the special case: Utah’s *Minor Protection in Social Media Act* (SC [403.4(d)]), Arkansas’ *Social Media*
20 *Safety Act* (SC [403.4(e)]), Florida’s *Online Protections for Minors Act* (SC [403.4(f)]), and Colorado’s *Healthier Social Media Use by Youth Act* (SC [403.4(g)]).³ NetChoice has challenged similar laws passed by other State legislatures.⁴

¹ Affidavit of Paul Taske affirmed 11 September 2026.

² *NetChoice v Fitch*, 145 S Ct 2658 (2025); *Moody v NetChoice*, 603 US 707 (2024); *NetChoice v Paxton*, 142 S Ct 1715 (2022).

³ *NetChoice v Weiser*, 808 F Supp 3d 1223 (D Colo, 2025), under appeal in *NetChoice v Weiser*, No 25-1456 (10th Cir, 2025); *NetChoice v Reyes*, 748 F Supp 3d 1105 (D Utah, 2024), under appeal in *NetChoice v Brown*, No 24-4100 (10th Cir, 2025); *NetChoice v Griffin* (WD Ark, No 5:23-CV-5105, 31 March 2025), under appeal in *NetChoice v Griffin*, No 25-1889 (8th Cir, 2025); *CCLA v Uthmeier*, 826 F Supp 3d 1358 (ND Fla, 2025), under appeal in *CCLA v A-G, State of Florida*, No 25-11881 (11th Cir, 2025), stay granted by *CCLA v Uthmeier* (11th Cir, No 25-11881, 25 November 2025).

⁴ *NetChoice v Bonta*, 761 F Supp 3d 1202 (ND Cal, 2024), reversed in part and remanded by *NetChoice v Bonta*, 152 F 4th 1002 (9th Cir, 2025); *NetChoice v Carr*, 789 F Supp 3d 1200 (ND Ga, 2025), under appeal in

5. EFF is a non-profit, donor-funded organisation that holds tax-exempt status in the United States. Founded in 1990, EFF has over 30,000 active individual donors (317 of whom have Australian addresses) and advocates in support of digital privacy, free expression and innovation.⁵ EFF has solicited the views of thousands of young people to understand how the Internet helps them learn, connect and grow,⁶ and it has made important contributions to public debate on these topics.⁷ EFF has litigated landmark challenges to laws prohibiting communication of content online without age verification,⁸ and has supported NetChoice and others in recent challenges to social media minimum age laws.⁹ EFF has also filed *amicus curiae* briefs in Supreme Court cases that address restrictions on young people's access to media.¹⁰
6. NetChoice represents the perspectives of a broad range of member companies offering online services, while EFF represents the interests of users of those services. Both can assist the Court in understanding (1) the burden that social media minimum age laws impose on the freedom of political communication; and (2) the less restrictive options available to governments for addressing perceived harms. NetChoice and EFF recognise the significant differences between the guarantee embodied in the First Amendment and the implied freedom of political communication. Part IV.2 below addresses the utility and limits of the comparative case law.

NetChoice v A-G, State of Georgia, No 25-12436 (11th Cir, 2025); *NetChoice v Fitch*, 787 F Supp 3d 262 (SD Miss, 2025), under appeal in *NetChoice v Fitch*, No 25-60348 (5th Cir, 2025), stay granted by *NetChoice v Fitch* (5th Cir, No 25-60348, 17 July 2025), vacatur application refused by *NetChoice v Fitch*, 145 S Ct 2658 (2025); *NetChoice v Hilgers* (D Neb, No 4:26-CV-3149-JMG-JMD, 27 June 2026); *NetChoice v Jones*, 822 F Supp 3d 656 (ED Va, 2026), under appeal in *NetChoice v Jones* (4th Cir, No 26-1252, 3 March 2026); *NetChoice v Murrill*, 812 F Supp 3d 594 (MD La, 2025), under appeal in *NetChoice v Murrill* (5th Cir, No 26-30016, 1 January 2026); *NetChoice v Skrmetti* (6th Cir, No 25-5660, 28 August 2026); *NetChoice v Yost*, 778 F Supp 3d 923 (SD Ohio, 2025), reversed and remanded by *NetChoice v Yost*, 180 F 4th 268 (6th Cir, 2026).

⁵ Affidavit of David Greene affirmed 10 September 2026.

⁶ Jason Kelley, 'Thousands of Young People Told Us Why the Kids Online Safety Act Will Be Harmful to Minors', *EFF* (15 March 2024), <<https://www.eff.org/deeplinks/2024/03/thousands-young-people-told-us-why-kids-online-safety-act-will-be-harmful-minors>>.

⁷ See 'Age Verification and Age Gating: Resource Hub', *EFF* <<https://www.eff.org/issues/age-verification>>.

⁸ See, eg, *ACLU v Reno*, 929 F Supp 824, 825–27 (ED Pa, 1996), affirmed by *Reno v ACLU*, 521 US 844 (1997); *ACLU v Reno*, 31 F Supp 2d 473 (ED Pa, 1999), affirmed by *ACLU v Reno*, 217 F 3d 162 (3d Cir, 2000), vacated by *Ashcroft v ACLU*, 535 US 564 (2002).

⁹ *CCIA v A-G, State of Florida*, No 25-11881 (11th Cir, 2025); *NetChoice v Bonta*, No 25-146 (9th Cir, 2025); *Fitch*, No 25-60348 (5th Cir, 2025); *NetChoice v A-G, State of Georgia*, No 25-12436 (11th Cir, 2025); *Skrmetti* (6th Cir, No 25-5660, 28 August 2026); *Yost*, 180 F 4th 268 (6th Cir, 2026).

¹⁰ See, eg, *Ashcroft v ACLU*, 535 US 564 (2002); *Brown v Entertainment Merchants Association*, 564 US 786 (2011); *Free Speech Coalition Inc v Paxton*, 606 US 461; 145 S Ct 2291 (2025); *Mahanoy Area School District v B L*, 594 US 180 (2021).

7. NetChoice’s and EFF’s members are directly affected by Pt 4A. NetChoice’s members—the platforms that must comply with Pt 4A—have collectively suspended, disabled or removed access to more than a million accounts.¹¹ Reddit is a member of NetChoice. However, the arguments Reddit presents are unlikely to cover the full range of NetChoice members’ concerns. Indeed, Reddit emphasises factors that distinguish it from other NetChoice members that offer social media services, including its “predominantly text-based” interface and the ability of “*any person* with Internet access [to] browse and search for posts and comments” (PS [16], [44], [60], [67]). NetChoice members operate a range of services that do not all share those features. Similarly, a ban limited to “services that can only be used with an account”, as Reddit has suggested (PS [67]), might address the concerns of some NetChoice members that operate such services (Reddit included), but would leave many others exposed to Pt 4A.
8. NetChoice’s limited intervention provides an orderly and efficient means by which the Court can consider the perspectives and interests of platforms beyond Reddit, through a trade association that represents industry views and that has advanced analogous arguments in litigation addressed to similar legislative schemes. This Court has previously given leave to a representative industry association to be heard as an *amicus curiae*, on the basis that its submissions may assist the Court in respect of matters not fully covered by the parties’ submissions.¹² EFF’s intervention, on a similarly confined basis, facilitates consideration of the views of an organisation that understands social media minimum age laws and their consequences for Internet users of all ages.
9. NetChoice and EFF are uniquely positioned to assist the Court on the merits. Comparative case law is likely to be relevant as a source of analogical reasoning, and Reddit relies on United States Supreme Court authority for that purpose (PS [65]). The special case cites various enactments as examples of “[c]omparative regulatory approaches in other jurisdictions”, including Arkansas, Colorado, Florida and Utah, but does not record their current status, including that three of them are currently enjoined (SC [403]). Reddit cites these four statutes as evidence of obvious and compelling alternatives to Pt 4A (PS [72]–[73]). As noted, NetChoice was and remains a party to challenges to all four statutes, and EFF has advanced arguments as an *amicus curiae* in

¹¹ SC [47] (43,962 Reddit accounts); SC [48.1] (330,639 Instagram accounts); SC [48.2] (173,497 Facebook accounts); SC [48.3] (39,916 Threads accounts); SC [49] (415,000 Snapchat accounts).

¹² *Roadshow Films Pty Ltd v iiNet Ltd* (2011) 248 CLR 37 at 40 [7] (French CJ, Gummow, Hayne, Crennan and Kiefel JJ).

those actions. The proposed interveners can therefore offer useful information about, and an accurate account of, those factually analogous proceedings.

10. To illustrate: the Arkansas *Social Media Safety Act* (**SCB 3282**) has been permanently enjoined since March 2025 as a result of litigation brought by NetChoice. The district court's decision is under appeal in the United States Court of Appeals for the Eighth Circuit, with EFF filing an *amicus* brief in support of NetChoice.¹³ At first instance, the district court observed that "Arkansas's imposition of an age-verification requirement for account creation is maximally burdensome" and "erects barriers to accessing entire social media platforms rather than placing those barriers around the content or functions that raise concern".¹⁴
11. Colorado's *Healthier Social Media Use by Youth Act* (**SCB 3301**) is likewise unenforceable as a result of the district court granting NetChoice's preliminary injunction motion.¹⁵ The Colorado law required social media platforms to provide users under the age of 18 with information about their use of the service, including pop-up and full-screen notifications where they use the platform for more than one hour at a time or between the hours of 10pm and 6am. Decisive to the court's conclusion was that "Colorado had other options at its disposal for advancing its goal of protecting the health and well-being of its children from the potential adverse effects of social media use".¹⁶ An appeal to the Court of Appeals for the Tenth Circuit is pending.¹⁷
12. Utah's *Minor Protection in Social Media Act* (**SCB 3275**) has been preliminarily enjoined since September 2024, again as a result of NetChoice's challenge.¹⁸ The district court noted that NetChoice's challenge was likely to succeed, including because the defendants had "not provided evidence establishing a clear, causal relationship between minors' social media use and negative mental health impacts".¹⁹ An appeal to the Court of Appeals for the Tenth Circuit was heard in late 2025, with EFF appearing as *amicus curiae*.²⁰ Judgment is reserved.

¹³ *Griffin* (WD Ark, No 5:23-CV-5105, 31 March 2025), under appeal in *Griffin*, No 25-1889 (8th Cir, 2025).

¹⁴ *Griffin* (WD Ark, No 5:23-CV-5105, 31 March 2025) slip op 30.

¹⁵ *Weiser*, 808 F Supp 3d 1223 (D Colo, 2025).

¹⁶ *Weiser*, 808 F Supp 3d 1223 at 1240 (D Colo, 2025).

¹⁷ *Weiser*, No 25-1456 (10th Cir, 2025).

¹⁸ *Reyes*, 748 F Supp 3d 1105 (D Utah, 2024).

¹⁹ *Reyes*, 748 F Supp 3d 1105 at 1125, 1127 (D Utah, 2024).

²⁰ *Brown*, No 24-4100 (10th Cir, 2025).

13. In May 2025, NetChoice and the Computer & Communications Industry Association successfully moved for a preliminary injunction against the Florida *Online Protections for Minors Act* (**SCB 3296**). The Florida law bars minors under 14 from creating accounts on certain social media platforms and requires 14- and 15-year-olds to obtain parental consent to do so. The following month, the Court of Appeals for the Eleventh Circuit stayed the injunction pending the State’s appeal, which has been argued but not decided.²¹ EFF intervened as *amicus* in that appeal. In suspending the injunction, the Court of Appeals observed that the Florida law “tailors its provisions to the ages of the young minors whose access it does restrict” and “narrows its focus to [social media platforms] that have evidenced significant usage by children and young teens”—both features that serve to distinguish the Florida law from Pt 4A.²²
14. The Court should have the benefit of this important context before treating any of these enactments as relevant comparators. The table below summarises various social media minimum age laws in the United States and their present status.

Statute	Mechanism	Status
Arkansas <i>Social Media Safety Act</i> (SB 396; Act 689)	Account prohibition for users under 18 years, subject to parental-consent exception.	Permanently enjoined. Appeal to Eighth Circuit pending. ²³
California <i>Protecting Our Kids from Social Media Addiction Act</i> (SB 976)	Design feature restrictions (minors’ accounts private by default; no access to likes or other feedback on posts), subject to parental-consent exception.	Preliminary injunction in respect of most provisions denied. Ninth Circuit reversed in part and remanded with direction to modify injunction to enjoin like-count provision. Balance of law remains operative. ²⁴
Colorado <i>Healthier Social Media Use by Youth Act</i> (HB 24-1136)	Mandatory information and usage notifications for users under 18 years.	Preliminarily enjoined. Appeal to Tenth Circuit pending. ²⁵
Florida <i>Online Protections for Minors Act</i> (HB 3)	Absolute account prohibition for users under 14 years; account prohibition for users aged 14 to 15, subject to parental-consent exception; parental right of account termination.	Preliminarily enjoined. Injunction stayed by Eleventh Circuit. Appeal judgment reserved; law remains operative. ²⁶

²¹ *Uthmeier* (11th Cir, No 25-11881, 25 November 2025); *CCLIA v A-G, State of Florida*, No 25-11881 (11th Cir, 2025).

²² *Uthmeier* (11th Cir, No 25-11881, 25 November 2025).

²³ *Griffin* (WD Ark, No 5:23-CV-5105, 31 March 2025); *Griffin*, No 25-1889 (8th Cir, 2025).

²⁴ *Bonta*, 761 F Supp 3d 1202 (ND Cal, 2024); *Bonta*, 152 F 4th 1002 (9th Cir, 2025).

²⁵ *Weiser*, 808 F Supp 3d 1223 (D Colo, 2025); *Weiser*, No 25-1456 (10th Cir, 2025).

²⁶ *Uthmeier*, 826 F Supp 3d 1358 (ND Fla, 2025); *Uthmeier* (11th Cir, No 25-11881, 25 November 2025).

Statute	Mechanism	Status
Georgia <i>Protecting Georgia's Children on Social Media Act</i> (SB 351)	Account prohibition for users under 16 years, subject to parental-consent exception; prohibition on display of advertising.	Preliminarily enjoined. Appeal to Eleventh Circuit pending. ²⁷
Louisiana <i>Secure Online Child Interaction and Age Limitation Act</i> (SB 162)	Account prohibition for users under 16 years, subject to parental-consent exception; account restrictions.	Permanently enjoined. Appeal to Fifth Circuit pending. ²⁸
Mississippi <i>Walker Montgomery Protecting Children Online Act</i> (HB 1126)	Account prohibition for users under 18 years, subject to parental-consent exception.	Preliminarily enjoined. Injunction stayed by Fifth Circuit pending appeal. Vacatur of stay denied by Supreme Court. ²⁹
Nebraska <i>Parental Rights in Social Media Act</i> (LB 383)	Account prohibition for users under 18 years, subject to parental-consent exception; ability of parents to monitor account.	Account prohibition and parental consent provisions preliminarily enjoined; parental monitoring provisions remain operative. ³⁰
Ohio <i>Parental Notification by Social Media Operators Act</i> (HB 33)	Account prohibition for users under 16 years, subject to parental-consent exception.	Permanently enjoined. Reversed and remanded by Sixth Circuit. Mandate stayed pending petition for certiorari. ³¹
Tennessee <i>Protecting Children from Social Media Act</i> (HB 1891, SB 2097)	Account prohibition for users under 18 years, subject to parental-consent exception.	Preliminary injunction denied. Reversed and remanded by Sixth Circuit. Remand pending; law remains operative. ³²
Utah <i>Minor Protection in Social Media Act</i> (SB 194)	Account restrictions (account visibility, ability to share content, direct messaging capabilities) and design feature restrictions (autoplay, endless feeds, push notifications), in each case for users under 18 years, subject to parental-consent exception; supervisory tools for minors (including self-imposed time limits).	Preliminarily enjoined. Appealed to Tenth Circuit; judgment reserved. ³³
Virginia SB 854	One-hour daily limit for users under 16 years.	Preliminarily enjoined. Appeal to Fourth Circuit pending. ³⁴

²⁷ Carr, 789 F Supp 3d 1200 (ND Ga, 2025); *NetChoice v A-G, State of Georgia*, No 25-12436 (11th Cir, 2025).

²⁸ Murrill, 812 F Supp 3d 594 (MD La, 2025); *Murrill* (5th Cir, No 26-30016, 1 January 2026).

²⁹ Fitch, 787 F Supp 3d 262 (SD Miss, 2025); *Fitch* (5th Cir, No 25-60348, 17 July 2025); *Fitch*, 145 S Ct 2658 (2025).

³⁰ *Hilgers* (D Neb, No 4:26-CV-3149-JMG-JMD, 27 June 2026).

³¹ Yost, 778 F Supp 3d 923 (SD Ohio, 2025); *Yost*, 180 F 4th 268 (6th Cir, 2026).

³² *Skrmetti* (6th Cir, No 25-5660, 28 August 2026).

³³ Reyes, 748 F Supp 3d 1105 (D Utah, 2024); *Brown*, No 24-4100 (10th Cir, 2025).

³⁴ Jones, 822 F Supp 3d 656 (ED Va, 2026); *Jones* (4th Cir, No 26-1252, 3 March 2026).

Part IV Argument

IV.1 Matters of context

15. The special case unfolds in a wider context. Around the globe, governments are responding to highly contestable correlational evidence about the feared effects of social media use on young people's mental health and overall wellbeing. To date, legislative responses have outrun the empirical evidence. Courts have been alive to this. The French Constitutional Council recently invalidated that country's social media ban, in part because the law was insufficiently tailored to risks across the entire cohort of affected children under 15 years and admitted of no exception for parental consent.³⁵
- 10 16. The absence of any firm scientific basis for social media bans is an agreed fact. The parties agree that "there is no scientific consensus about ... the existence of a causal link between social media use and particular harms which are said to be associated with social media use" (SC [329]). They also accept that "testing has not established scientific consensus on any causal mechanism for the association" (SC [347]). The Commonwealth's case is founded solely on a purportedly "credible risk, based on peer-reviewed research" (SC [335], [356]). United States courts have grappled with these same evidentiary deficiencies, in many cases finding them to be fatal to the validity of laws not unlike Pt 4A, on reasoning that is analogically instructive here.

IV.2 Utility and limits of the First Amendment case law

- 20 17. NetChoice and EFF are mindful of the differences between Australian and United States doctrine: the implied freedom is not a personal guarantee, review is not calibrated according to "tiers" of scrutiny, and the doctrines of vagueness, overbreadth and "chilling effects" have no counterpart in the Australian *Constitution*.³⁶

³⁵ Décision n° 2026-911 DC du 14 août 2026 (Loi visant à protéger les mineurs des risques auxquels les expose l'utilisation des réseaux sociaux) at [16] ("l'interdiction instituée ne donne lieu à aucune appréciation particulière du risque pour le mineur, tenant compte notamment de son âge, de son degré de maturité, de sa situation familiale ainsi que de la nature du service concerné"); see also at [15], [17].

³⁶ *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408 at 1447–1448 [185] (Gleeson J); *LibertyWorks Inc v Commonwealth* (2021) 274 CLR 1 at 24 [49] (Kiefel CJ, Keane and Gleeson JJ); *Brown v Tasmania* (2017) 261 CLR 328 at 373–374 [147]–[151] (Kiefel CJ, Bell and Keane JJ), 472–475 [457]–[466] (Gordon J); *Tajjour v New South Wales* (2014) 254 CLR 508 at 551 [37] (French CJ), 575 [131]–[132] (Crennan, Kiefel and Bell JJ); *McCloy v New South Wales* (2015) 257 CLR 178 at 202–203 [29]–[30], 215 [72]–[73] (French CJ, Kiefel, Bell and Keane JJ); *Monis v The Queen* (2013) 249 CLR 92 at 206 [324]–[326] (Crennan, Kiefel and Bell JJ).

18. Nonetheless, the Court has looked to United States jurisprudence for “analogical assistance in the development of the case law on the implied freedom”.³⁷ The “narrow tailoring” inquiry mandated by the First Amendment has an analytical analogue in the implied freedom, typically expressed as the absence of obvious and compelling alternatives that are reasonably practicable, equally effective and less restrictive. “First Amendment case law and scholarship have been drawn upon extensively by the High Court”, and “[r]eference to them is appropriately continued as our own body of case law develops, provided that it is constantly borne in mind that danger lies in ‘uncritical translation’ of any foreign doctrine”.³⁸ By way of example, “where laws are expressed in broadly similar terms, comparative United States jurisprudence can assist by identifying the effect that the laws can have in burdening political communication”.³⁹
19. Part 4A and the various United States statutes regulate the same field of activity and employ similar devices to achieve their ends, including access restrictions for defined groups, age verification, and the imposition of enforcement obligations on social media platforms. It follows that consideration of those foreign statutes and authorities interpreting them may assist in identifying the extent to which Pt 4A burdens the implied freedom. This Court has compared impugned laws with analogous United States statutes to identify, by reference to the latter, the possibility of obvious, compelling and less intrusive alternatives.⁴⁰ The same exercise is likely to prove fruitful here, where the comparator statutes in question regulate minors’ access to social media by various means, including ones less drastic than an outright ban.

IV.3 Scope and nature of the burden

20. The degree of intrusion upon the implied freedom of political communication is a critical input in the analysis. This Court has variously spoken of the need to identify “how and how intensely ... a law effectively burdens freedom of political communication”, which is “a qualitative question to be answered by reference to the legal operation and practical effect of the law”; to ascertain “the effect upon the ability

³⁷ *McCloy* (2015) 257 CLR 178 at 229 [120] (Gageler J).

³⁸ *Clubb v Edwards* (2019) 267 CLR 171 at 230 [179] (Gageler J).

³⁹ *LibertyWorks* (2021) 274 CLR 1 at 90 [234] (Edelman J); see also at 69–70 [178]–[180] (Gordon J), 98 [257] (Steward J).

⁴⁰ *LibertyWorks* (2021) 274 CLR 1 at 41–42 [104]–[106], 47 [120] (Gageler J), 64–65 [166] (Gordon J), 90–91 [233]–[235] (Edelman J), 96–98 [252]–[258] (Steward J); *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181 at 192–193 [21] (Gleeson CJ).

of persons to communicate on the matters the subject of the freedom in various ways”; and to assess “the intensity or focus of the effect of a law in constraining free political communication” (the dimension of “depth”) and “the extent of the conduct which is constrained, including the number of people affected and the time and place where they are affected” (the dimension of “width”).⁴¹

21. The occasion to consider the potential for social media regulation to burden political speech has arisen squarely and repeatedly in the United States context. Here, as in *LibertyWorks*, “[t]he United States experience of effect in relation to broadly similar laws can assist an Australian court to consider the breadth and depth of a burden upon political communication in Australia”.⁴²
22. The first insight concerns the medium itself. As the Supreme Court observed in *Packingham v North Carolina*, “[w]hile in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views”, the answer is now “clear”: “cyberspace—the vast democratic forums of the Internet in general, and social media in particular.”⁴³ Even modest limitations on access to social media can work significant burdens on the freedom of political communication. As the Court noted, social media websites provide a “relatively unlimited, low-cost capacity for communication of all kinds”, allow users “to gain access to information and communicate with one another about it on any subject that might come to mind”, and stand for many as “the principal sources” for “knowing current events” and “speaking and listening in the modern public square”.⁴⁴
23. The special case bears out *Packingham*’s description of social media as one of the “principal sources” for staying abreast of current events and engaging in political discussion. For young people, that observation assumes added force. Social media is the primary source of news for young Australians: 41 per cent of 10- to 17-year-olds obtained their news from social media the previous day, and 39 per cent have no source of news apart from social media and whatever they are able to glean from family, friends, teachers, AI tools and news summaries (SC [309.1]).

⁴¹ *Brown* (2017) 261 CLR 328 at 374 [150] (Kiefel CJ, Bell and Keane JJ), 382–383 [180] (Gageler J); *Ravbar v Commonwealth* (2025) 99 ALJR 1000 at 1057 [230] (Edelman J).

⁴² *LibertyWorks* (2021) 274 CLR 1 at 90–91 [234] (Edelman J).

⁴³ 582 US 98 at 104 (2017) (Kennedy J for the Court) (citation and internal quotation marks omitted and emphasis added), citing *Reno*, 521 US 844 at 868 (1997).

⁴⁴ *Packingham*, 582 US 98 at 104, 107 (2017) (Kennedy J for the Court).

24. The capacity for young people to engage in political communication long predates the Internet. More than half a century ago, the United States Supreme Court considered the case of Mary Beth Tinker, who at 13 years old had sufficient political consciousness to protest the Vietnam War by wearing a black armband to school.⁴⁵ What has changed, as more recent cases emphasise, is that the primary site of political communication for many young people has moved online. As the Virginia district court put it, “[p]latforms such as Facebook, Instagram, YouTube, Reddit, and others now serve as a central forum for expression, information sharing, and general public discourse”.⁴⁶

10 25. Young people’s ability to engage in and receive political communication is vital to the maintenance of the constitutionally prescribed system of government to which the implied freedom owes its existence. In *Uthmeier*, the Florida district court noted that the State’s law denied young people access to platforms that can be used to “stay informed about current events and engage in speech on important political and social issues, and learn from others”.⁴⁷ In language that rings equally true in the Australian context, the court described the constitutional system as “better served” when its “citizens in training”, for whom the “responsibilities and privileges of citizenship are significant”, are able to “build those muscles over time, beginning when they are young, rather than all at once the day they come of age”.⁴⁸ Referring to *Packingham*’s observation that social media websites “provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard”, the court reasoned: “This is perhaps especially true for youth, for whom the available forums for speech are generally more limited than for adults, who tend to have freer rein to decide for themselves where to go and how to spend their time.”⁴⁹ In the same vein, the Arkansas district court in *Griffin* observed that “[m]inors, who cannot vote for the lawmakers that represent them, can use social media to make their voices heard on issues that affect them”, and the court in *Yost* remarked that “[m]inors’ access to information is essential to their growth into productive members of [the] democratic public sphere”.⁵⁰

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⁴⁵ *Tinker v Des Moines Independent Community School District*, 393 US 503 (1969).

⁴⁶ *Jones*, 822 F Supp 3d 656 at 664 (ED Va, 2026).

⁴⁷ *Uthmeier*, 826 F Supp 3d 1358 at 1383 (ND Fla, 2025).

⁴⁸ *Uthmeier*, 826 F Supp 3d 1358 at 1385 (ND Fla, 2025).

⁴⁹ *Uthmeier*, 826 F Supp 3d 1358 at 1384 (ND Fla, 2025) (emphasis added).

⁵⁰ *Griffin* (WD Ark, No 5:23-CV-5105, 31 March 2025) slip op 31; *Yost*, 778 F Supp 3d 923 at 932 (SD Ohio, 2025).

26. The United States Supreme Court authorities on online age verification offer a useful illustration of how Pt 4A operates as a direct burden on the implied freedom (PS [37]–[38]), making it “more difficult to justify”.⁵¹ In *Reno v ACLU* and *Ashcroft v ACLU*, the Supreme Court applied strict scrutiny to federal laws that criminalised publication online of any material accessible to minors that was “indecent” or “harmful to minors”, subject to a defence for persons who undertook age verification before disseminating the material, because those laws “effectively suppress[ed] a large amount of speech that adults have a constitutional right to receive and to address to one another”.⁵² Two decades later, in *Free Speech Coalition Inc v Paxton*, the Court applied only intermediate scrutiny to a Texas law requiring commercial websites to implement age verification if more than one-third of their content was “sexual material harmful to minors”, on the premise that “no person—adult or child—has a First Amendment right to access speech that is obscene to minors without first submitting proof of age”.⁵³ The Court distinguished the laws in *Reno* and *Ashcroft* as “operat[ing] as a ban on speech to adults”, making them “categorically different” from a law that shielded minors from content they had no constitutional right to access, such that “[a]ny burden experienced by adults” was “only incidental to the statute’s regulation of activity that is not protected”.⁵⁴ The Supreme Court accepted in *Paxton* that Texas had a “reasonable basis” for excluding social media sites from the age-verification requirement, because “less than a third of their content is obscene to minors”.⁵⁵
27. Part 4A imposes a direct burden, closer in kind to the laws in *Reno* and *Ashcroft* than to the Texas law in *Paxton*. It prohibits young people from engaging in any active form of communication on age-restricted social media platforms, including political communication, rather than restricting their access to those websites as a means of preventing them from accessing material that does not engage the implied freedom (such as the sexually explicit material the subject of the law in *Paxton*).
28. Part 4A similarly burdens political communication by adults, who are swept up in the same age-assurance process as a condition of accessing age-restricted social media

⁵¹ *McCloy* (2015) 257 CLR 178 at 268–269 [252]–[253] (Nettle J) (collecting authorities).

⁵² *Reno*, 521 US 844 at 874, 879 (1997) (Stevens J for the Court); *Ashcroft*, 542 US 656 at 665, 666–670 (2004) (Kennedy J for the Court).

⁵³ 606 US 461, 145 S Ct 2291 at 2306 (2025) (Thomas J for the Court).

⁵⁴ *Paxton*, 606 US 461; 145 S Ct 2291 at 2309, 2312 (2025) (Thomas J for the Court).

⁵⁵ *Paxton*, 606 US 461; 145 S Ct 2291 at 2318 (2025) (Thomas J for the Court).

platforms. Inevitably, the duty to take reasonable steps to detect and deactivate or remove accounts of age-restricted users requires the affected platforms to verify *every* user's age (SC [380]). As Reddit notes, the burden on adults is meaningful "to the extent they are unable or unwilling to complete any age assurance process, for example for privacy reasons, and so will not retain or create new accounts" (PS [37]). The United States courts have described the same mechanism. As *Ashcroft* recognised, age verification mandates impose "universal restrictions at the source", while filtering regimes allow adults to "gain access to speech they have a right to see without having to identify themselves".⁵⁶ The consequence of age verification, as the district courts have explained, is that "[a]ll users are restricted from accessing protected speech, even adults, until they can show that they are not a minor"; the provisions apply "to all users, broadly burden[ing] adult users' ability to access a broad range of protected speech on a broad range of covered websites".⁵⁷ This "burdens a large amount of protected speech—for minors and adults alike".⁵⁸ The majority in *Paxton* similarly accepted that "submitting to age verification is a burden", referring to "the incidental burden that age verification necessarily has" on protected speech.⁵⁹ Justice Kagan, in dissent, observed that "[s]ome individuals will forgo that speech because of the need to identify themselves to a website (and maybe, from there, to the world)".⁶⁰

IV.4 Justification and causality

- 20 29. A recurring feature of the successful challenges to State laws curtailing minors' access to social media is the lack of any sufficient evidentiary foundation justifying the burden. As Reddit recognises (PS [57]–[58]), the absence of a causal link between social media use and identified harms or any quantification of risk necessarily bears upon whether the burden on the implied freedom can be justified.
30. The United States cases are useful by analogy on this point. Reddit cites *Brown v Entertainment Merchants Association*, where a California law prohibiting the distribution of "violent video games" to minors was invalidated because the State could

⁵⁶ *Ashcroft*, 542 US 656 at 667 (2004) (Kennedy J for the Court).

⁵⁷ *Jones*, 822 F Supp 3d 656 at 675 (ED Va, 2026); *Reyes*, 748 F Supp 3d 1105 at 1129 fn 169 (D Utah, 2024) (citation and internal quotation marks omitted).

⁵⁸ *Murrill*, 812 F Supp 3d 594 at 648 (MD La, 2025).

⁵⁹ *Paxton*, 606 US 461; 145 S Ct 2291 at 2309, 2316 (2025) (Thomas J for the Court).

⁶⁰ *Paxton*, 606 US 461; 145 S Ct 2291 at 2320 (2025) (Kagan J, dissenting); see also at 2321.

not “show a direct causal link between violent video games and harm to minors”, instead relying upon “a predictive judgment that such a link exists, based on competing psychological studies” (PS [65]).⁶¹ Scalia J, writing for the Court, described California’s evidence as “not compelling”, “based on correlation, not evidence of causation”, “show[ing] at best some correlation between exposure to violent entertainment and minuscule real-world effects”, and disclosing “effects ... both small and indistinguishable from effects produced by other media”.⁶²

31. United States courts have identified the same vice in social media minimum age laws and other restrictions directed at minors. The Ohio district court in *Yost* found that the State had not “come forward with a compelling basis for believing that [the] harms are actually caused by the socially interactive nature of these websites”, and that the record it had assembled was “much like the deficient record in *Brown*”, in that it was “correlational” and identified only “small or negligible negative links between social media use and well-being”.⁶³ The Court of Appeals reversed and remanded, but Batchelder J, concurring in the judgment, accepted that “[t]his [was] not to say the record before [the court] universally points to a causal relationship between children’s using social media and then manifesting symptoms of poor mental health”.⁶⁴

32. Similarly, the Louisiana district court found that the State had “not established a causal relationship between social media use and health harms to minors”, describing as “troubling” that a purported leading researcher “could not supply consensus definitions of ‘social media’ or ‘mental health’”, “did not have any ‘formal criteria’ for including studies in her expert report”, and “included only studies showing a correlative, not a causal, relationship between social media use and harms to minors”.⁶⁵ The Nebraska district court rejected the State’s contention that “social media platforms, writ large, are causing endemic mental health problems” as “not borne out by the evidence”, noting that the evidence only “indicate[d] that *some features of social media* may be harmful to minors”.⁶⁶ That evidence was confined to “algorithmic, personalized feeds”, such that

⁶¹ 564 US 786 at 799 (2011) (Scalia J for the Court).

⁶² *Brown*, 564 US 786 at 800–801 (2011) (Scalia J for the Court).

⁶³ *Yost*, 778 F Supp 3d 923 at 955–956 fn 10 (SD Ohio, 2025) (internal quotation marks omitted).

⁶⁴ *Yost*, 180 F 4th 268 at 299 (6th Cir, 2026) (Batchelder J, concurring); see also at 299–300 (“As the SG Advisory concedes, ‘[m]ost prior research to date has been correlational, focused on young adults or adults, and generated a range of results’”).

⁶⁵ *Murrill*, 812 F Supp 3d 594 at 651 (MD La, 2025).

⁶⁶ *Hilgers* (D Neb, No 4:26-CV-3149-JMG-JMD, 27 June 2026) slip op 19–20 (emphasis added).

the court was “not persuaded ... that *every platform* that allows its account holders to share content with each other ... is causing the harm identified”.⁶⁷

33. The lack of empirical support for age-verification requirements and bans proved decisive in these cases because the First Amendment requires specific evidence of harms sought to be addressed: “[t]o show a ‘compelling interest,’ a government must do more than ‘simply posit the existence of the disease sought to be cured’”; instead, it “‘must come forward with empirical support’ showing the restriction on speech will materially and directly alleviate some specific, concrete societal harm”.⁶⁸

10 34. The requirement of empirical support for burdens on political communication is not peculiar to the United States. Although this Court has not imported tier-based scrutiny, the evidence required to justify a burden on the implied freedom increases with the directness and intensity of the intrusion. Where a burden is “direct, substantial and discriminatory”, it must be able to “withstand ... close scrutiny consistent with a compelling justification”, and it may be that “the circumstances and the state of the evidence, *or lack of it*, leave the court unpersuaded that the degree of burden which the impugned law imposes on the implied freedom is necessary for the achievement of the legitimate purpose for which the law was enacted”.⁶⁹

IV.5 Availability of reasonably practicable alternatives

20 35. Pt 4A is maximally burdensome. It prevents all young people under the age of 16 from holding accounts on age-restricted social media platforms, making no exceptions for parental consent, and treating all platforms the same regardless of whether the design features of concern are directed to, or can be disabled for, users in the affected cohort.

36. Strikingly, Pt 4A is more burdensome than *every* comparable statute in the United States.⁷⁰ Most of the statutes imposing age-verification mandates, including the few that have survived challenge to date, allow the affected cohort of minors to hold an account

⁶⁷ *Hilgers* (D Neb, No 4:26-CV-3149-JMG-JMD, 27 June 2026) slip op 19 (emphasis added).

⁶⁸ *Hilgers* (D Neb, No 4:26-CV-3149-JMG-JMD, 27 June 2026) slip op 18.

⁶⁹ *Clubb* (2019) 267 CLR 171 at 232 [183]–[184] (Gageler J), 266 [268] (Nettle J) (emphasis added).

⁷⁰ See the table at [14] above and the enactments included with the special case (SC [403.4]; SCB 3275, 3282, 3296, 3301). The statutes are described in detail in the decisions cited in fnn 23–34.

with parental consent.⁷¹ Others require the social media companies to limit the time verified minors may spend on the platform, to restrict the functionality or privacy settings of minors' accounts, or to send notifications to minors about their level of social media use.⁷² The closest analogue to Pt 4A is Florida's *Online Protections for Minors Act*, which requires social media platforms to prohibit minors younger than 14 years from holding accounts, without exception.⁷³ Florida's law remains operative pending appeal, but it draws the line of absolute prohibition at 14 rather than 16 years and has a parental-consent exception for 14- and 15-year-olds. To NetChoice's and EFF's knowledge, Pt 4A is currently the most extensive prohibition on youth access to social media in force in any liberal democracy.

37. NetChoice and EFF do not accept that a parental-consent exception can salvage a law that prohibits large cohorts of young people from holding social media accounts. Laws that are subject to exceptions for parental consent or that allow curtailed access to the platform still impose significant burdens on political communication, for reasons the federal district courts have articulated. For present purposes, the important point is that the mere existence of laws that stop short of prohibiting *all* young people from holding social media accounts is highly probative of whether there are reasonably practicable alternatives to Pt 4A, which does take that further step.

38. Against the backdrop of those less sweeping laws, the Court would be satisfied as to the existence of "obvious" and "compelling" alternatives that achieve the legitimate object but with a less restrictive effect on the freedom. That conclusion holds even when allowance is made for Parliament's wide latitude to select among policy choices and the need for any posited alternative to be as effective as the impugned law in achieving the identified objects.⁷⁴ The same result follows *a fortiori* if the nature and extent of the identified burden engages a heightened standard of "close scrutiny" or "compelling justification", in which case the existence of those alternatives precludes any finding

⁷¹ Ohio Rev Code § 1349.09(B); Ark Code Ann § 4-88-1402(a); Miss Code Ann § 45-38-7; La Stat Ann § 51:1752(A)–(B); Ga Code Ann § 39-6-2; Tenn Code Ann § 47-18-5703; LB 383 § 28(2) (Neb, 2025); Fla Stat § 501.1736(3)(a).

⁷² Va Code Ann § 59.1-577.1B; Utah Code Ann §§ 13-71-201 to 13-71-203; Cal Health & Safety Code §§ 27001(a), 27002; Colo Rev Stat § 6-1-1601.

⁷³ Fla Stat § 501.1736(2)(a)–(b).

⁷⁴ *McCloy* (2015) 257 CLR 178 at 210–211 [57]–[58] (French CJ, Kiefel, Bell and Keane JJ), 285–286 [328] (Gordon J); *Brown* (2017) 261 CLR 328 at 371–372 [139] (Kiefel CJ, Bell and Keane JJ); *Babet v Commonwealth* (2025) 99 ALJR 883 at 926 [186] (Edelman J).

that Pt 4A is “narrowly tailored” to achieve a “compelling” object “in a manner that *minimally impairs* freedom of political communication”.⁷⁵

39. The United States district courts that have preliminarily or permanently enjoined restrictions similar to Pt 4A have identified ample less restrictive alternatives, which the special case confirms are equally available in Australia. Parents decide whether and on what terms to give their minor children Internet-connected devices in the first place, and they can implement all manner of restrictions at the network, device, browser and app levels to control their children’s access to social media. The special case acknowledges the availability and common use of those parental controls (SC [404]–[436]). The Commonwealth can raise awareness of their use, subsidise third-party commercial offerings, work with platforms to address any perceived limitations of filtering technologies, and educate young people about safe social media practices and the available tools to improve their online experiences.
40. In the United States, social media minimum age laws have failed the First Amendment’s narrow tailoring requirement because of these ubiquitous tools—the very kinds of “selective restrictions on speech at the receiving end” that impose a lesser burden than “universal restrictions at the source”.⁷⁶ The Arkansas law failed because “[a]ge-verification requirements are ... more restrictive than policies enabling or encouraging users (or their parents) to control their own access to information, whether through user-installed devices and filters or affirmative requests to third-party companies”.⁷⁷ The Mississippi district court found that the State’s parental-consent requirement failed First Amendment scrutiny because “minors’ parents and guardians already have many tools at their disposal to monitor and control their children’s online access, including network-, device-, browser- and app-level restrictions”, and the State had “not shown that ... the private tools currently available for parents to monitor their children online ... would be insufficient to secure the State’s objective of protecting children”.⁷⁸
41. States have argued that age-verification requirements and account prohibitions are necessary because parents either do not know about, or do not care to use, the parental

⁷⁵ *LibertyWorks* (2021) 274 CLR 1 at 40 [100] (Gageler J); see also at 69 [179], 71 [182] (Gordon J); *Mulholland* (2004) 220 CLR 181 at 200 [40] (Gleeson CJ); *Babet* (2025) 99 ALJR 883 at 896 [48] (Gageler CJ and Jagot J).

⁷⁶ *Ashcroft*, 542 US 656 at 667 (2004) (Kennedy J for the Court).

⁷⁷ *Griffin* (WD Ark, No 5:23-CV-5105, 31 March 2025) slip op 31.

⁷⁸ *Fitch*, 787 F Supp 3d 262 at 277–278 (SD Miss, 2025).

controls already available. The parties have similarly stipulated that “[t]he effectiveness of parental controls is dependent on a number of features and varies with the individual circumstances of families”, and the special case identifies “[l]imitations on the efficacy of parental controls” that include “variation in the digital literacy of parents”, “variation in accuracy of setup of parental controls”, “requirements for ongoing monitoring of parental controls”, and “circumvention of parental controls” (SC [436]).

42. Parental controls do not become unsuitable alternatives to account prohibitions merely because parents have not universally adopted them. “The need for parental cooperation does not automatically disqualify a proposed less restrictive alternative”, and courts “should not presume parents, given full information, will fail to act”.⁷⁹ The Utah district court observed in *Reyes* that “evidence suggesting parental controls are not in widespread use ... does not establish parental tools are deficient”, and that low uptake “only demonstrates parents are unaware of parental controls, do not know how to use parental controls, or simply do not care to use [them]”.⁸⁰ There was no evidence that the State had “tried, or even considered, promoting the diverse supervisory technologies that are widely available as an alternative to the Act”, or that “minors are so capable of evading parental controls that they are an insufficient alternative to the State infringing on protected speech”.⁸¹ And the court made the point, borne out by the special case (PS [55]–[56]; SC [388]), that “[i]f minors are capable of circumventing parental controls at all levels, there is reason to believe children could also circumvent the controls the Act requires social media companies to impose”.⁸²
43. Likewise, in *Griffin*, the Arkansas district court accepted that “notice to parents of [the] availability [of parental controls] is a much less restrictive means of promoting the State’s interest”, rejecting Arkansas’ argument that age-verification requirements are permissible because of their “simplicity”.⁸³ And in *Jones*, the Virginia district court rejected the State’s argument that “current parental controls were not working because

⁷⁹ *Ashcroft*, 542 US 656 at 669 (2004) (Kennedy J for the Court), quoting *United States v Playboy Entertainment Group, Inc.*, 529 US 803 at 824 (2000).

⁸⁰ *Reyes*, 748 F Supp 3d 1105 at 1127 (D Utah, 2024).

⁸¹ *Reyes*, 748 F Supp 3d 1105 at 1127 (D Utah, 2024) (internal quotation marks omitted).

⁸² *Reyes*, 748 F Supp 3d 1105 at 1127 fn 150 (D Utah, 2024).

⁸³ *Griffin* (WD Ark, No 5:23-CV-5105, 31 March 2025) slip op 32.

parents were not taking advantage of them”.⁸⁴ Here, any argument that Pt 4A is justified by the ineffectiveness of parental controls will be met with the same reasoning.

44. Nor is mandating or raising awareness of parental controls the only practicable alternative. The Nebraska district court upheld provisions requiring platforms to supply “oversight tools” by which parents can control their children’s use, describing them as “narrowly tailored to alleviate the identified harms of unmonitored social media activity by minors”.⁸⁵ The Colorado district court identified alternatives to the State’s law requiring social media operators to provide pop-up and full-screen notifications to young people whose time on the platform exceeded certain limits, including “incentiviz[ing] social media companies to voluntarily provide these disclosures to their minor users, or ... elect[ing] to provide minors with these disclosures itself”.⁸⁶ Equally, the Commonwealth can incentivise social media companies to make voluntary disclosures to users about the research identified in the special case, or provide young people and their parents with such information directly. In *Uthmeier*, the Florida district court noted that parents and the State were not “powerless” to address “sincere concerns about the effects that social media use may have on youth”, pointing to provisions of the Florida law—unchallenged and undisturbed—requiring social media platforms to comply with parental requests to terminate any account held by a youth under 16.⁸⁷ Neither the legislature nor the State “explained why the law’s parental veto provision ... [was] insufficient to achieve [Florida’s] interest”.⁸⁸

45. Part 4A operates on *accounts*, even though the special case and Rule 4A locate the risk of harm to young people in specific design *features*. The special case attributes the purported harms of social media to “certain design features” that act on “neurological systems in the human brain” (SC [335]–[336], [339]), while recording that the parties have not identified any peer-reviewed research testing whether any design feature or mode of implementation is more or less likely than another to produce addictive, disordered or problematic social media use (SC [337]). Rule 4A similarly brings within Pt 4A’s sweep only those services that have a “recommender feature” or a “logged-in feature”, the latter defined by reference to endless feeds, feedback and time-limited

⁸⁴ *Jones*, 822 F Supp 3d 656 at 676 (ED Va, 2026).

⁸⁵ *Hilgers* (D Neb, No 4:26-CV-3149-JMG-JMD, 27 June 2026) slip op 25.

⁸⁶ *Weiser*, 808 F Supp 3d 1223 at 1240 (D Colo, 2025).

⁸⁷ *Uthmeier*, 826 F Supp 3d 1358 at 1364 (ND Fla, 2025).

⁸⁸ *Uthmeier*, 826 F Supp 3d 1358 at 1387 (ND Fla, 2025).

content. An account prohibition is mismatched to the purported risk of harm from design features, because it applies whether or not the platform in question makes that design feature available to young people (or at all) or allows the design feature to be disabled for that segment of users. And, as Reddit points out (PS [46], [48]), an account prohibition does nothing to address the purported risk of harm to which young people are exposed by platforms that deploy those design features to logged-out users.

46. Regulation of features rather than exclusion of users is an obvious and reasonably practicable alternative. The legislature could have considered alternatives that might actually map on to the risk identified as requiring legislative intervention. Design feature regulation is at least as effective as account prohibition in addressing the risk the special case identifies, because it targets the perceived source of harm directly and applies to platforms that the child can access without an account.⁸⁹ And it is less restrictive because the child can still participate and adults are spared the friction of age assurance.

47. In saying this, NetChoice and EFF should not be understood as accepting that design feature regulation is constitutionally permissible—either here or in the United States. The question before the Court is whether the Commonwealth had at its disposal reasonably practicable, less restrictive means of achieving its purpose, not whether those means would themselves survive constitutional challenge. This Court has previously treated both existing and potential laws as reasonably practicable alternatives, without deciding whether those laws were themselves compatible with the implied freedom.⁹⁰ NetChoice and EFF accordingly take no position on whether a law targeting design features would be valid in Australia. Any such law would impose some burden on the implied freedom and therefore require justification. Much would depend on imponderables including the design feature in question, how it is proposed to be regulated, and the intensity of the burden imposed. None of that is before the Court.

48. Courts in the United States have noted how the legislatures that mandated account prohibitions overlooked alternatives tailored to the design features of apparent concern. The Florida district court rejected the State’s argument that its law was “tailored to preventing harm to youth because it only targets social media sites that use ‘specific

⁸⁹ See, eg, *NetChoice v Griffin*, 812 F Supp 3d 905 at 925 (WD Ark, 2025) (identifying the potential for regulation of certain design features as an option that “may help reduce compulsive use”).

⁹⁰ *Brown* (2017) 261 CLR 328 at 373 [146] (Kiefel CJ, Bell and Keane JJ); *LibertyWorks* (2021) 274 CLR 1 at 41–42 [104]–[106] (Gageler J).

features found by the Legislature (and the U.S. Surgeon General) to be addictive”⁹¹. The court noted that “the law applies to any social media site that employs any one of the five addictive features under any circumstances, even if, for example, the site only sends push notifications if users opt in to receiving them, or the site does not auto-play video for account holders who are known to be youth”.⁹² And, the court observed, “even if a social media platform created youth accounts for which none of the purportedly ‘addictive’ features are available, it would still be barred from allowing youth to hold those accounts if the features were available to adult account holders”.⁹³

- 10 49. To similar effect, the Nebraska district court found that the State’s law was “not tailored, let alone narrowly tailored, to algorithmic, personalized feeds, nor any of the other specific features identified in the evidence”, because the definitions “cover platforms without those features ... and exclude platforms that have them”.⁹⁴ Utah similarly failed to identify “why [its] Act’s scope is not constrained to social media platforms with significant populations of minor users, or social media platforms that use the addictive features fundamental to Defendants’ well-being and privacy concerns”.⁹⁵ An implicit premise of the reasoning in each case is that redressing the perceived risk of harm presented by design features need not entail account prohibitions.

Part V Estimate of time required

- 20 50. If leave is granted, NetChoice and EFF will rely on their written submissions and not seek leave to present oral argument.

Dated: 11 September 2026



Christopher J Beshara
Eleven Wentworth
02 8231 5006
cbeshara@elevenwentworth.com

⁹¹ *Uthmeier*, 826 F Supp 3d 1358 at 1385 (ND Fla, 2025).

⁹² *Uthmeier*, 826 F Supp 3d 1358 at 1385 (ND Fla, 2025).

⁹³ *Uthmeier*, 826 F Supp 3d 1358 at 1385 (ND Fla, 2025).

⁹⁴ *Hilgers* (D Neb, No 4:26-CV-3149-JMG-JMD, 27 June 2026) slip op 19.

⁹⁵ *Reyes*, 748 F Supp 3d 1105 at 1129 (D Utah, 2024).

ANNEXURE TO PROPOSED SUBMISSIONS OF NETCHOICE AND EFF

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date(s)
<i>Commonwealth</i>					
1.	The Constitution	Current	Whole	Currently in force	All relevant times
2.	<i>Online Safety Act 2021</i> (Cth)	Current	Pt 4A	Currently in force	All relevant times
<i>Foreign Statutes</i>					
3.	<i>Healthier Social Media Use by Youth Act</i> (Colorado)	Current	Colo Rev Stat § 6-1-1601	For illustrative purposes	N/A
4.	<i>Louisiana Revised Statutes</i> (Louisiana)	Current	La Stat Ann § 51:1752(A)–(B)	For illustrative purposes	N/A
5.	<i>Minor Protection in Social Media Act</i> (Utah)	Current	Utah Code Ann §§ 13-71-201 to 13-71-203	For illustrative purposes	N/A
6.	<i>Online Protections for Minors Act</i> (Florida)	Current	Fla Stat § 501.1736(2)(a)–(b), (3)(a)	For illustrative purposes	N/A
7.	<i>Parental Notification by Social Media Operators Act</i> (Ohio)	Current	Ohio Rev Code § 1349.09(B)	For illustrative purposes	N/A
8.	<i>Parental Rights in Social Media Act</i> (Nebraska)	Current	LB 383 § 28(2)	For illustrative purposes	N/A
9.	<i>Protecting Children from Social Media Act</i> (Tennessee)	Current	Tenn Code Ann § 47-18-5703	For illustrative purposes	N/A

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No	Description	Version	Provision(s)	Reason for providing this version	Applicable date(s)
10.	<i>Protecting Georgia's Children on Social Media Act</i> (Georgia)	Current	Ga Code Ann § 39-6-2	For illustrative purposes	N/A
11.	<i>Protecting Our Kids from Social Media Addiction Act</i> (California)	Current	Cal Health & Safety Code §§ 27001(a), 27002	For illustrative purposes	N/A
12.	<i>Social Media Safety Act</i> (Arkansas)	Current	Ark Code Ann § 4-88-1402(a)	For illustrative purposes	N/A
13.	<i>Virginia Senate Bill 854</i> (Virginia)	Current	Va Code Ann § 59.1-577.1B	For illustrative purposes	N/A
14.	<i>Walker Montgomery Protecting Children Online Act</i> (Mississippi)	Current	Miss Code Ann § 45-38-7	For illustrative purposes	N/A