No. 25-1889

United States Court of Appeals

For the Eighth Circuit

NETCHOICE, LLC,
Plaintiff-Appellee,

v.

TIM GRIFFIN, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF ARKANSAS,
Defendant-Appellant.

On Appeal from the United States District Court
for the Western District of Arkansas
No. 5:23-CV-5105 (Hon. Timothy L. Brooks)

BRIEF OF *AMICI CURIAE* TECHNET, COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA), AND SOFTWARE & INFORMATION INDUSTRY ASSOCIATION (SIIA) IN SUPPORT OF APPELLEE AND AFFIRMANCE

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DISCLOSURE STATEMENT

Amici curiae TechNet, Computer & Communications Industry Association (CCIA), and Software & Information Industry Association (SIIA), through their undersigned counsel, submit this Disclosure Statement pursuant to Federal Rule of Appellate Procedure 26.1.

TechNet, CCIA, and SIIA are nonprofit, tax-exempt organizations organized under the laws of the District of Columbia (TechNet, SIIA) and Virginia (CCIA). No *amicus* has a parent company, and no publicly held company has 10% or greater ownership in any of the *amici*.

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STATEMENT OF INTEREST[1]

TechNet is a national, bipartisan network of technology CEOs and senior executives advocating a targeted policy agenda at the federal and state levels. It is a non-profit organization committed to a digitally interconnected society in which all people benefit from technology and the opportunities for speech that are afforded by a safe and open internet. Its membership spans more than 100 American companies ranging from startups to the world's largest technology companies. Those companies employ more than five million employees and countless customers across information technology, artificial intelligence, social media, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

TechNet has particular expertise regarding how companies of all sizes manage compliance with state laws governing the internet and the unique harms that the Arkansas Social Media Safety Act ("Act") would cause.[2] It has a strong interest in protecting the expressive freedom and due process rights of digital service providers and their users and in encouraging rational, harmonized regulatory frameworks that

[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

[2] A list of TechNet members is available at *Members* (2025), https://www.technet.org/our-story/members/.

promote child safety, privacy, and innovation—rather than an unworkable assemblage of conflicting state mandates.

CCIA is an international, not-for-profit association that represents a broad cross-section of communications, technology, and internet industry firms that collectively employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy.[3] For more than 50 years, CCIA has promoted open markets, open systems, and open networks, including as a party to or amicus in litigation. In addition, CCIA regularly advocates for the application of First Amendment protections for lawful online speech. Particularly relevant here, CCIA was co-Plaintiff with Appellee NetChoice in the Supreme Court's landmark case on the First Amendment's protections for online editorial discretion: *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024).

SIIA is the principal trade association for those in the business of information. Its nearly 400 members—software companies, platforms, data and analytics firms, and digital publishers—serve business, education, government, healthcare, and consumers. SIIA protects the rights of its members to use software as a tool for the dissemination of information and has a strong interest in predictable, robust First

[3] A list of CCIA members is available at https://www.ccianet.org/members.

Amendment protections. A significant cross-section of SIIA's membership creates tools for young people, and SIIA believes kids deserve access to information and the virtual tools critical in keeping them connected and engaged in their communities without fear of being exploited.[4]

SUMMARY OF THE ARGUMENT

The State's threshold standing arguments rest on a repeatedly rejected and unsupported theory that would radically narrow access to judicial review in First Amendment cases. Settled Article III doctrine forecloses the State's position.

First, the State is wrong to claim that NetChoice impermissibly "stacks" associational standing on top of third-party standing. Associational standing turns on whether an organization's members would have standing in their own right, whether the interests asserted are germane to the organization's purpose, and whether individual participation is required. Nothing in that test distinguishes between claims based on members' direct injuries and claims based on members' well-established ability to assert the rights of third parties. Once NetChoice's members suffer concrete injury from the Act's compliance burdens—as the District Court correctly found—associational standing follows. The State's attempt to graft

[4] A list of SIIA members is available at SIIA Member Companies, https://www.siia.net/about-us/member-companies/.

additional limits onto this settled framework finds no support in Supreme Court precedent and would improperly curtail long-recognized avenues for constitutional review.

Second, the State misunderstands third-party standing doctrine in arguing that digital services lack a sufficiently "close relationship" with their users. The Act regulates the moment at which users seek to access, receive, or create speech on websites—an interaction that lies at the core of First Amendment protection. Intermediaries and users are engaged in the same constitutional exchange, and the burdens imposed by the Act fall simultaneously on both sides of that relationship. In this context, services and users have aligned First Amendment interests in opposing prior restraints on lawful speech. The State's effort to recast that alignment as a conflict because some users might support the Act improperly collapses standing into the merits and misapplies governing law.

Third, the Act itself creates the hindrance that justifies NetChoice's standing. Longstanding First Amendment doctrine recognizes that speech-restrictive laws often deter the exercise of rights before any enforcement action occurs, making direct litigation by affected speakers or listeners unlikely. That concern is especially acute here. By conditioning access to speech on age-verification and parental-consent mechanisms that require disclosure of sensitive identifying information, the Act predictably induces self-censorship and deters participation—particularly by

minors. As courts have repeatedly recognized in analogous cases, including *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383 (1988), such deterrent effects constitute a practical barrier to direct enforcement of users' rights and warrant third-party standing.

Finally, the State's proposed rule would produce perverse and unworkable results. Modern speech regulations frequently target the interface between services and users. If trade associations were barred from challenging such laws whenever third-party standing is implicated, states could insulate broad regulatory schemes from collective review, forcing piecemeal litigation, increasing costs, delaying resolution, and risking inconsistent judgments. Nothing in Article III requires such inefficiency—particularly where it would undermine both freedom of association and the judiciary's ability to adjudicate constitutional claims.

The Court should reject the State's theories and affirm the District Court's conclusion that NetChoice has standing to proceed.

ARGUMENT

I. The Court Should Reject the State's "Stacking" Theory; Trade Associations Must Be Permitted to Assert the Full Scope of Their Members' Standing.

The State's threshold standing argument rests on a novel and unsupported theory: that NetChoice impermissibly "stacks" associational standing atop third-party standing.[5] According to the State, even if NetChoice's members could assert the First Amendment rights of their users, the association itself cannot do so. That contention finds no support in Article III doctrine and, if accepted, would dramatically curtail established avenues for constitutional review.

First, the State's "no stacking" theory is incompatible with settled associational standing doctrine. It is black-letter law that an association has standing to sue on behalf of its members when: (1) those members would otherwise have standing in their own right; (2) the interests at stake are germane to the organization's purpose; and (3) the claims asserted do not require individual member participation. *See Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). This same test applies whether claims are asserted directly by members or derivatively.

[5] The State seems to have borrowed the theory from a twenty-four year old, out-of-Circuit dissent which never became law and which has been thoroughly rejected in the years since. Appellant's Br. at 22-23, (quoting *Pa. Psychiatric Soc'y v. Green Spring Health Servs., Inc.,* 280 F.3d 278, 294 (3d Cir. 2002) (Nygaard, J., dissenting)).

Pa. Psychiatric Soc'y v. Green Spring Health Servs., Inc., 280 F.3d 278, 291 (3rd Cir. 2002) ("We decline to adopt a per se rule barring such derivative claims… The limitations on derivative standing, therefore, are to be determined by applying the test for associational standing specified in *Hunt*.") *Hunt*'s first prong asks only whether NetChoice's members have standing, not whether that standing is born of a direct or derivative injury. *Cf. Planned Parenthood Arizona, Inc. v. Brnovich*, 172 F. Supp. 3d 1075, 1092 (D. Ariz. 2016) ("The ability to advocate for the interests of [both] physicians and the patients they serve is not severed by the corporate form…").

Here, the District Court explained in detail the concrete economic burdens NetChoice members would face were the Act to take effect. *See NetChoice, LLC v. Griffin,* 2023 WL 5660155, at *9 (2023 W.D. Ark. August 31, 2023) ("If Act 689 goes into effect, the member entities will have three choices: incur expenses to implement an age-verification system in compliance with the Act; bar Arkansans from opening accounts on all regulated platforms; or face criminal penalties and civil enforcement actions brought by the Arkansas Attorney General. … While the State quibbles with precisely how burdensome Act 689 will prove in practice, it does not deny that compliance will impose some costs."). Those unavoidable compliance costs establish Article III injury in fact. Once that predicate is satisfied, associational

standing follows. The Court need not entertain the State's invitation to graft additional limitations onto settled doctrine.

Nor should the Court upend decades of Supreme Court precedent based on the State's unfounded assertion that the associational standing doctrine "is already on shaky constitutional grounds." Appellant's Br. at 23. The State relies on a lone out-of-circuit dissent, *Green Spring*, 280 F.3d at 294 (3d Cir. 2002) (Nygaard, J., dissenting), and then on an isolated concurrence endorsed by no other Justice, *FDA v. All. for Hippocratic Med*., 602 U.S. 367, 399 (2024) (Thomas, J., concurring).[6] The Supreme Court, by contrast, has repeatedly affirmed the *Hunt* framework. *e.g., Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.,* 600 U.S. 181, 198-201 (2023) (applying *Hunt*, finding the test satisfied). This Court should not disregard controlling precedent based on the State's selective overreading of *dicta*.

Second, derivative rights do not evaporate when asserted through an association. If Nextdoor, YouTube, or another NetChoice member has third-party standing to assert its users' rights—as courts have repeatedly held—those claims do not become non-justiciable merely because they are brought collectively through a

[6] The State cites as well to one out-of-Circuit concurrence, one more out-of-Circuit dissent, and a 2019 denial of certiorari to demonstrate that the doctrine is "on shaky constitutional grounds." Appellant's Br. at 23. Of course none of these has precedential value and this Court remains bound by *Hunt.*

trade association. The State's emphasis on an allegedly "attenuated" relationship between NetChoice and internet users misunderstands what a trade association is. In practical terms, NetChoice, like *amici*, is comprised of individual members, each of which would have standing to sue in their own right if impacted by a speech-restrictive law. The aggregation of claims by multiple parties with standing does not alter the nature of the constitutional injury or the standing analysis. *Cf. Int'l. Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Brock,* 477 U.S. 274, 290 (1986) ("In addition, the doctrine of associational standing recognizes that the primary reason people join an organization is often to create an effective vehicle for vindicating interests that they share with others."); *contra*, Appellant's Br. at 22-23 ("NetChoice cannot gain standing to assert users' First Amendment rights by combining associational standing and third-party standing in this fashion to create a hybrid-type of third-party derivative standing.") (citation omitted).

This reasoning is particularly salient in First Amendment litigation, where courts have long recognized that derivative rights-holders may be the only realistic litigants. *See Harris v. Evans*, 20 F.3d 1118, 1122 n.5 (11th Cir. 1994), *cert. denied,* 513 U.S. 1045 ("The Supreme Court has recognized that, in certain cases, the risk that a third party's free speech may be 'chilled' by an overbroad statute or ordinance may warrant the grant of standing to a party whose speech is not protected by the First Amendment."); *see infra,* Section III. Online and multimedia services

routinely assert the rights of their users, particularly where laws impede editorial discretion, access to speech, or the mechanics of publication. *See, e.g., Interactive Dig. Software Ass'n v. St. Louis County, Mo.,* 329 F.3d 954, 957 (8th Cir. 2003); *In re Grand Jury Subpoena to Amazon.com Dated Aug. 7, 2006,* 246 F.R.D. 570, 572 (W.D. Wis. 2007) ("Amazon willingly provided most of the requested information but it has refused to identify any book buyers to the government, citing the buyers' First Amendment right to maintain the privacy of their reading choices."); *NetChoice v. Bonta,* 761 F. Supp. 3d 1202, 1223 (N.D. Cal. 2024) (*aff'd in part, rev'd in part, NetChoice v. Bonta*, 152 F.4th 1002 (9th Cir. 2025) ("In addition to claiming that SB 976's personalized feed restrictions limit its members' own speech, NetChoice also claims that SB 976 limits social media users' access to speech.").[7]

Finally, the State's proposed "no stacking" rule would yield perverse and unworkable results. Many modern speech regulations target the interface between digital services and users, not speech in isolation. *See, e.g., Moody v. NetChoice, LLC*, 603 U.S. 707, 717 (2024) (reviewing First Amendment challenges to "two state laws … [which] restrict[ed] the ability of social-media platforms to control whether

[7] The State cites *Bonta* for the proposition that NetChoice cannot assert the First Amendment rights of its members' users, ignoring entirely that the Ninth Circuit expressly held otherwise in the context of facial challenges. *Compare Bonta*, 152 F.4th at 1018, *with id.* at 1019 (stating expressly that "[u]nlike in the as-applied area, reliance on the speech of nonlitigants is permissible for facial challenges.").

and how third-party posts are presented to other users."). If associations were barred from challenging such laws whenever third-party standing is implicated, states could effectively insulate broad regulatory schemes from collective challenge, raising several constitutional and practical concerns.

As a constitutional matter, "guarantee[d] freedom of association [is] an indispensable means of preserving other individual liberties," including the right to petition. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984). Forcing NetChoice, or any trade association like *amici*, to abandon collective litigation as a means of seeking legal redress would itself raise grave First Amendment concerns. Further, as a practical matter, requiring companies to litigate individually and piecemeal would increase costs, delay resolution, and invite inconsistent judgments. Judicial economy has long been a central concern of standing doctrine. *See Friends of the Earth, Inc. v. Laidlaw Env't. Servs. (TOC), Inc.*, 528 U.S. 167, 191 (2000) ("Standing doctrine functions to ensure, among other things, that the scarce resources of the federal courts are devoted to those disputes in which the parties have a concrete stake."); *Rio Grande Found. v. Oliver*, 57 F.4th 1147, 1159 (10th Cir. 2023) (quoting *id*. and noting that "[a]lthough the primary concern is jurisdictional, the case-or-controversy requirement also protects judicial economy …"). This Court should decline the State's invitation to jettison the efficiency concerns underlying decades of standing law, especially where the upshot of the State's approach may well be a system in

which unconstitutional legislation is effectively shielded from judicial review. Article III neither requires nor tolerates such inefficiency.

II. The "Close Relationship" Prong Is Satisfied by the Inextricable Nexus Between Services and Users.

The State next contends that websites lack a sufficiently "close relationship" with their users—particularly future users—and that any such relationship is undermined by an alleged conflict between companies' profit motives and user safety. Appellant's Br. at 21-22. Both arguments rest on a fundamental misunderstanding of NetChoice's members and a misapplication of third-party standing doctrine.

The Supreme Court has made clear that the close-relationship inquiry turns on whether the litigant is an effective proponent of the third party's rights in light of the challenged regulation, not on whether the parties' interests align in every respect. *See, e.g., Singleton v. Wulff,* 428 U.S. 106, 115 (1976) (to assert third-party standing, "the relationship between the litigant and the third party may be such that the former is fully, or very nearly, as effective a proponent of the right as the latter."); *Green Spring*, 280 F.3d at 289 ("To meet [the close relationship] standard, [the] relationship must permit the psychiatrists to operate 'fully, or very nearly, as effective a proponent' of their patients' rights as the patients themselves.") (quoting *Powers v. Ohio*, 499 U.S. 400, 413 (1991)).

As the District Court correctly recognized, the Act regulates the transaction of speech itself: the moment a user seeks to access, receive, or create content on a website. That interaction is not abstract or hypothetical. It is the publisher-reader—or speaker-listener—relationship at the core of First Amendment protection. *See Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc*., 425 U.S. 748, 756–57 (1976) (recognizing that the First Amendment protects both the right to speak and the reciprocal right to receive information); *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965) ("The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, [and] the right to read..."); *Carpenter v. State of South Dakota,* 536 F.2d 759, 761 (8th Cir. 1976) ("It is now well established that the Constitution protects the right to receive information and ideas."); *Buehrle v. City of Key West,* 813 F.3d 973, 977 (11th Cir. 2015) ("The government need not ban a protected activity such as the exhibition of art if it can simply proceed upstream and dam the source... For this reason, the Supreme Court has never 'drawn a distinction between the process of creating a form of pure speech (such as writing or painting) and the product of these processes (the essay or the artwork) in terms of the First Amendment protection afforded.'") (quoting *Anderson v. City of Hermosa Beach,* 621 F.3d 1051, 1061 (9th Cir. 2010)). Digital service providers exist to disseminate speech; users seek to engage with it. When the State

imposes age-verification and parental-consent mandates at that juncture, it burdens both sides of the same constitutional exchange.

Accordingly, the First Amendment interests of intermediaries and users are aligned, not adverse. Digital service providers seek to host and distribute lawful speech free from prior restraints. Users seek to access speech and express themselves without surrendering anonymity or being deterred by surveillance-like mechanisms. Courts have repeatedly recognized that intermediaries stand in a sufficiently close relationship to their audiences when a law restricts dissemination or access to speech. *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 392–93 (1988). The District Court found that the Act "impedes access to content writ large," imposing a shared burden on speakers, intermediaries, and listeners alike. *NetChoice, LLC v. Griffin*, 2025 WL 978607, at *13 (2025 W.D. Ark. March 31, 2025). That mutual injury satisfies the close-relationship requirement.

The State's attempt to recharacterize this alignment as a conflict by invoking the personal policy preferences of some members or social media users is a misdirected inquiry. Standing doctrine does not require the alignment of motives; it requires congruence with respect to the injury. Nor does it require the unanimous approval of *every individual* who might access the speech at-issue. Were that a strict requirement, the law would never afford any opportunity to bring a facial challenge. Moreover, that certain NetChoice members have voluntarily adopted a "13-years-

old-and-over policy" does not mean the First Amendment permits the State to coerce every member into adopting one. The State attempts to distract from the core question: can NetChoice act as an effective proponent of users' rights in this context? *Singleton,* 428 U.S. at 115. Here, both websites and users seek invalidation of a law that imposes an unconstitutional prior restraint on access to speech. That is sufficient as a matter of law.

III. The Act Itself Creates the "Hindrance" That Prevents Users from Asserting Their Own Rights.

Finally, the State argues that users— including minors—face no hindrance to bringing their own lawsuits, pointing to other cases in which minors have appeared as plaintiffs. That argument ignores the distinctive nature of the constitutional injury alleged here and the practical realities recognized by the District Court. It also disregards the controlling case law governing the hindrance inquiry in First Amendment cases.

Litigants may challenge speech-restrictive statutes not only because their own expressive rights are violated, but also because "the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973). Consistent with that principle, courts have repeatedly found *Virginia v. Am. Booksellers Ass'n., Inc.*, 484 U.S. 383 (1988), to be controlling. *See, e.g., NetChoice, LLC v. Griffin*, 2023 WL

5660155, at *11 (2023 W.D. Ark. August 31, 2023) (finding the case to be "particularly compelling"); *NetChoice, LLC v. Yost,* 716 F. Supp. 3d 539, 551 (6th Cir. 2024) (finding it "[m]ost on point on this issue"); *NetChoice, LLC v. Fitch*, 134 F.4th 799, 806 (5th Cir. 2025); *NetChoice v. Carr,* 789 F. Supp. 3d 1200, 1214 (N.D. Ga. 2025); *N.H. Right to Life Pol. Comm. v. Gardner*, 99 F.3d 8, 13-14 (1st Cir. 1996) (citing *American Booksellers* and noting that "[i]n such cases, an actual injury can exist when the plaintiff is chilled from exercising her right to free expression or forgoes expression in order to avoid enforcement consequences… In such situations the vice of the statute is its pull toward self-censorship".); *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 660 (5th Cir. 2006) (citing *American Booksellers* to note that "[c]ontrolling precedent thus establishes that a chilling of speech because of the mere existence of an allegedly vague or overbroad statute can be sufficient injury to support standing.").

In *American Booksellers*, the Court permitted bookseller associations to assert the First Amendment rights of readers because the statute created a substantial risk of self-censorship that would prevent readers from ever vindicating their own rights. 484 U.S. at 393. The challenged law made it unlawful to display certain materials "in a manner whereby juveniles may examine and peruse" them, forcing booksellers to either restrict access to protected speech or risk prosecution. *Id.* at 387. Faced with that dilemma, the Court recognized that the statute's *deterrent effect*, not the formal

availability of judicial review, was as relevant to the standing inquiry as the booksellers' direct injuries. *See id.* at 392-93. Because readers would predictably refrain from seeking out protected materials rather than expose themselves or their booksellers to legal risk, the law itself created a practical barrier to direct enforcement of readers' First Amendment rights.

That same dynamic is present here. Like the booksellers, online applications and websites are the immediate targets of regulation, but the statute's constitutional injury falls just as heavily on those who seek to access speech. The Act conditions access to broad categories of lawful expression on age-verification and parental-consent mechanisms that require users to disclose sensitive identifying information. As the District Court found, those requirements deter users from accessing speech at all and compel them to relinquish anonymity as the price of participation in the marketplace of ideas. In that environment, users—particularly minors—are far more likely to self-censor than to initiate litigation that would require them to identify themselves publicly to challenge a regime that penalizes anonymous access to speech.

Further, as in *American Booksellers*, the Act operates as a prior restraint on speech by inducing self-censorship before any enforcement action occurs. *See* 484 U.S. at 393. And as in that case, the existence of a theoretical path to suit does not defeat third-party standing where the law's design makes the exercise of First

Amendment rights, and the assertion of those rights in court, materially less likely. The Court sanctioned third-party standing in *American Booksellers* precisely to avoid that outcome. That same concern applies with equal, if not greater, force in the digital context, where access to speech is instantaneous, identity disclosure is durable, and the chilling effects of surveillance-based regulation are especially acute.

The concern is even more acute here, where the First Amendment right being defended is not merely the right to access information, but the right to do so anonymously, a particularly venerated form of protected speech in our First Amendment tradition. *See McIntyre v. Ohio Elections Comm'n.*, 514 U.S. 334, 357 (1995) ("Anonymity is a shield from the tyranny of the majority" which "exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society.") The District Court found that the Act compels users to relinquish anonymity through age-verification processes that entail risks of data retention, misuse, or identity theft. *See NetChoice, LLC v. Griffin*, 2023 WL 5660155, at *17 (2023 W.D. Ark. August 31, 2023). ("Age-verification schemes like those contemplated by Act 689 'are not only an additional hassle,' but 'they also require that website visitors forgo the anonymity otherwise available on the internet.'") (quoting *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 99 (2d Cir. 2003)). To require users—again particularly minors—to identify themselves in court

as a prerequisite to challenging the law would create the very Catch-22 the *American Booksellers* Court sought to avoid. Conditioning the vindication of anonymous-speech rights on self-identification is a paradigmatic hindrance under third-party standing doctrine.

The Act also chills speech by deterring participation altogether. The District Court found it likely that many users will simply avoid regulated entities altogether rather than submit sensitive information. *See id.* ("It is likely that many adults who otherwise would be interested in becoming account holders on regulated social media platforms will be deterred—and their speech chilled—as a result of the age-verification requirements …"). That chilling effect makes it less likely that affected users will step forward as plaintiffs, reinforcing the prudential justification for third-party standing.

This case involves both of these risks to protected speech, so the logic of *American Booksellers* is all the more compelling. Where a law deters speech and discourages participation by design, it simultaneously obstructs direct enforcement of the rights it infringes. This is why the relevant hindrance imposed by the law need not be absolute: even where some plaintiffs *might* be able to sue in theory, prudential standing kicks in where a law creates even "a *possibility* that, rather than risk punishment for his conduct in challenging the statute, he will refrain from engaging

further in the protected activity." *Sec'y. of State of Md. v. Munson*, 467 U.S. 947, 956 (1984) (emphasis added).

The State's response does not meaningfully engage with this reality. The relevant question is whether the Act makes the assertion of users' rights less likely. On that question, the State's brief is silent—most tellingly, it omits any engagement with *American Booksellers*, *Munson*, or *Broadrick*. The Court should recognize that omission for what it is.

When the right to speak freely is in danger, digital services and their representative associations are not merely appropriate litigants; they are often the only realistic ones.

CONCLUSION

The Court should affirm the District Court's determination that NetChoice has associational standing to assert the claims of its members and third-party standing to assert the First Amendment rights of its members' users. The State's contrary theories are inconsistent with settled doctrine and would undermine the ability of courts to review speech-restrictive laws in the digital age.

Dated: January 28, 2026

/s/ Justina Sessions
Justina K. Sessions
Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because it contains 4,473 words, excluding the parts exempted by Fed. R. App. P. 32(f).
2. I also certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because the brief has been prepared in 14-point Times New Roman font.
3. Pursuant to 8th Circuit Rule 28A(h)(2), I further certify that this PDF file was scanned for viruses, and no viruses were found on the file.

Dated: January 28, 2026

/s/ Justina Sessions
Justina K. Sessions
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2026, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eight Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: January 28, 2026

/s/ Justina Sessions
Justina K. Sessions
Counsel for Amici Curiae