No. 25-1889

In the 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

BRIEF OF AMICUS CURIAE TECHFREEDOM IN SUPPORT OF APPELLEE AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

TechFreedom has no parent corporation, it issues no stock, and no publicly held corporation owns a ten-percent or greater interest in it.

/s/ Corbin K. Barthold

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INTEREST OF AMICUS CURIAE*

TechFreedom is a nonprofit, nonpartisan think tank based in Washington, D.C. It is dedicated to promoting technological progress that improves the human condition. It opposes ever-evolving government meddling in online speech. See, e.g., Br. of TechFreedom, *NetChoice, LLC v. Fitch*, No. 25A97 (U.S., July 24, 2025) (opposing Mississippi social media age-verification law); Br. of TechFreedom, *Bonta v. NetChoice, LLC*, No. 23-2969 (9th Cir., Feb. 14, 2024) (opposing California social media "design" code); Br. of TechFreedom, *Moody v. NetChoice, LLC*, No. 22-277 (U.S., Dec. 7, 2023) (opposing Florida and Texas social media speech codes); Br. of TechFreedom & Prof. Eric Goldman, *Volokh v. James*, No. 23-356 (2d Cir., Sept. 25, 2023) (opposing New York social media "transparency" law).

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* No party's counsel authored any part of this brief. No one, apart from TechFreedom and its counsel, contributed money intended to fund the brief's preparation or submission. All parties have consented to the brief's being filed.

INTRODUCTION AND SUMMARY OF ARGUMENT

> In short, he became so absorbed in his books that he spent his nights from sunset to sunrise, and his days from dawn to dark, poring over them; and what with little sleep and much reading his brains got so dry that he lost his wits.
>
> Miguel de Cervantes, *Don Quixote* (1605)

Humans are fascinated by stories and ideas. Perhaps that is why each new medium of communication provokes anxiety about its supposed power to unmoor impressionable minds. Before long, though, the fears about each new medium come to look quaint. Books drive men mad. Pamphlets promote disobedience to authority. Novels seduce the young into idleness. Comic books breed violence. Television breeds violence. Video games breed violence. Every time, we are told that *this* time is different. *This* new medium, unlike the last, is *uniquely* dangerous and corrupting. *This* new medium will rob other people—it's always *other* people, usually children—of reason and virtue.

Now it is social media's turn.

The Arkansas Social Media Safety Act requires social media companies to verify the age of every user who seeks to create an account, and it bars minors under 16 from creating an account without parental consent. This law picks winners and losers in the marketplace of ideas. The Act spares the powerful—institutional speakers such as newspapers

and television stations. The Act instead targets the comparatively powerless—average people for whom social media is the best, or even only, outlet to spread a message. The Act presents this and other First Amendment problems. The district court held it "unconstitutional in all conceivable applications." R. Doc. 77 at 33-34.

In this brief, we focus on why the Act is subject to strict scrutiny. The Act is a textbook speaker- and content-based regulation of speech. It singles out platforms where ordinary people speak to one another, disfavoring peer-to-peer conversations—and the unique topics such conversations raise—in favor of legacy media's curated product and message. And no matter how loudly Arkansas insists otherwise, online age verification is obviously a burden on speech. Dishing out that burden with such favoritism to some, and discrimination against others, plainly triggers strict scrutiny.

Supreme Court precedents applying intermediate scrutiny are of no help to Arkansas. *Free Speech Coalition v. Paxton*, 145 S. Ct. 2291 (2025), concerned pornography obscene to minors, a category of speech historically unprotected for children and, going forward, only partially protected for adults. *TikTok v. Garland*, 145 S. Ct. 57 (2025), was a national-security case, addressed in an emergency posture, that the Court itself stressed was "narrow" and limited to a foreign-adversary-

controlled platform. And *Turner Broadcasting System v. FCC*, 512 U.S. 622 (1994), concluded that the speaker-based distinction before it was not content-based for reasons that do not hold here. None of these cases gives Arkansas cover to suppress vast swaths of fully protected social-media speech.

Make no mistake: Arkansas's alarmism about the harms and perils of social media is overwrought. Arkansas is partaking in the latest in a long line of tech-driven moral panics. As with past such panics, the rhetoric has run far ahead of the evidence. See, e.g., Mike Masnick, *Two Major Studies, 125,000 Kids: The Social Media Panic Doesn't Hold Up*, Techdirt (Jan. 21, 2026), tinyurl.com/47jtmew7 (summarizing two large recent cohort studies, one finding that social-media use and well-being isn't linear—i.e., *moderate* social-media use, among minors, is better than either heavy use *or* no use—and another finding *no* correlation between social-media use and teen mental health); Christopher J. Ferguson, et al., *There Is No Evidence That Time Spent on Social Media Is Correlated With Adolescent Mental Health Problems: Findings From a Meta-Analysis*, 56 Prof. Psych.: Research & Pract. 73 (Feb. 2025), tinyurl.com/u59d766v ("[O]ur findings indicate that the current research literature is unable to provide strong evidence for a clinically relevant link between time spent on social media and mental health issues in

youth."); *Health Advisory on Social Media Use in Adolescence*, Am. Psych. Assoc. (May 2023), tinyurl.com/mwea7a84 ("Using social media is not inherently beneficial or harmful to young people."); *The Anxious Generation*, If Books Could Kill (Aug. 8, 2024), tinyurl.com/5xmesjzv ("Essentially, the research is all over the place. At just the most basic level, are kids who are on their phones less happy than kids who are not on their phones? We can't even really say anything definitive. And to the extent that we do find associations, they're extremely small.").

But even if social media were as risky as Arkansas suggests (to repeat: that's not what the data shows), Arkansas would still have to comply with the First Amendment. The Act does not do so.

ARGUMENT

I. Because the Arkansas Social Media Act Is Speaker- and Content-Based, Strict Scrutiny Applies.

The Act targets speech based on who is speaking and what topics are addressed. It therefore must withstand strict scrutiny—which, as appellee explains in detail, it cannot do. See ARB 33-41.

The First Amendment "prohibit[s] . . . restrictions distinguishing among different speakers." *Citizens United v. FEC*, 558 U.S. 310, 340 (2010). Such distinctions "are all too often"—as here—"simply a means to

control content." *Id.* See also *Minneapolis Star v. Minn. Comm'r of Revenue*, 460 U.S. 575, 591-92 (1983).

The Act homes in on social media—platforms that "facilitate" social "interaction" among users. Ark. Code §4-88-1401(11)(A). The Act does not focus on establishment speakers, such as television shows or newspaper articles that lecture the average viewer or reader, who cannot respond. (In fact, the Act explicitly *excludes* "news-gathering organization[s]." *Id.* at §4-88-1403(d)(2).) Instead, it governs havens for user-generated speech—"vast democratic forums" where everyday people can post content, view others' posts, and connect with each other. *Reno v. ACLU*, 521 U.S. 844, 868 (1997).

If social media were comprised merely of posting boards for legacy media content, they would enjoy only a fraction of their current popularity. What makes social-media content *appealing* is what the vast community of social-media users have *to say*. Arkansas has a beef with the distinctive nature of peer-to-peer content. The district court understood this. It concluded, correctly, that the Act "privileges institutional creators—movie and TV studios, mainstream media outlets, and traditional journalists—over the Soundcloud artist, the TikTok chef, and the citizen journalist." R. Doc. 77 at 24.

Before social media, public discourse was dominated by large corporate newspapers and broadcasters. There was much concern about "the concentration of control of media." *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 249 (1974). "The power to inform the American people and shape public opinion" rested "in a few hands." *Id*. at 250. Many believed that corporate media, influenced by government and business interests, offered only a narrow "homogeneity" of acceptable views. *Id*. News and opinion were laundered and sanitized, and "the public ha[d] lost an ability to respond." *Id*. See Renée DiResta, "The New Media Goliaths," *Noema Magazine*, tinyurl.com/yrwbsavk (June 1, 2023) (discussing Noam Chomsky's theory of "manufactured consent"—the notion that "throughout the 20th century, . . . a hegemonic media . . . presented a filtered picture of reality").

Social media disrupted this paradigm. It enables ordinary people to reach one another directly, thereby opening public debate to a much wider range of viewpoints. The Supreme Court has acknowledged that "social media" is now the most important place "for the exchange of views" among "private citizen[s]." *Packingham v. North Carolina*, 582 U.S. 98, 103, 105 (2017). Social media "is different from traditional media outlets" in that "every user . . . can be both speaker and listener." *NetChoice, LLC v. Att'y Gen., Fla.*, 34 F.4th 1196, 1204 (11th Cir. 2022),

vacated on other grounds, 603 U.S. 707 (2024). Social media platforms foster "different sorts of online communities" with diverse "values and viewpoints." *Id*. at 1205.

The Act singles out platforms that empower ordinary people to speak to their peers. That is a speaker-based distinction on its face. And it is a content-based distinction as well, because ordinary people want to discuss a wider range of topics than do corporate media outlets. In picking specifically on those whose content finds an audience on social media, the Act blatantly discriminates based on speaker and content. See, e.g., Dan Williams, *Is Social Media Destroying Democracy—Or Giving It to Us Good and Hard?*, Conspicuous Cognition (Oct. 7, 2025), tinyurl.com/4vax24wc ("If people want to hear perspectives that elites reject, they are unlikely to find them within elite-controlled media. Social media changes that . . . [It] amplifies ideas that elites previously excluded from mainstream discourse.").

Arkansas tries to shoot the moon, arguing that it may duck First Amendment scrutiny altogether. It pretends, for instance, that imposing age verification on social media does not burden speech. That is simply incorrect. "[S]ubmitting to age verification is a burden on the exercise of" users' First Amendment rights. *Free Speech Coal.*, 145 S. Ct. at 2309. See

generally Eric Goldman, *The "Segregate-and-Suppress" Approach to Regulating Child Safety Online*, 28 Stan. Tech. L. Rev. 173 (2025).

Arkansas's strangest gambit, in this regard, is to argue that it is regulating not free expression, but contracts between users and platforms. AOB 25-28. As appellee explains, the invocation of contracts is "risible," ARB 4—the litigation equivalent of yelling "Look, squirrel!" The whole point of the Act, as Arkansas readily admits throughout its brief, is to limit what minors can *read*, *watch*, and *say*.

Arkansas's "contract" theory doesn't merely fail; it throws the state's purported interest in child safety into question. Social media platforms' terms of service are a major component of those platforms' trust-and-safety operations. Platforms' terms of service require users not to post hate speech or graphic content, not to harass other users, and so on. See, e.g., Instagram, *Terms of Use*, tinyurl.com/4jvmhpjp (accessed Jan. 22, 2026) (reserving the right to remove any content that violates the platform's community standards). If the Act were a valid contract regulation, platforms' logical next move would be to drop their terms of service, thereby eliminating the content rules they contain. The upshot would be platforms that are accessible by, yet much less safe for, the very minors Arkansas claims to want to protect. That Arkansas's "contract" theory strives to leave minors *worse* off suggests that Arkansas's true

motive for the Act lies elsewhere—such as in animosity toward large social media platforms.

Arkansas tries to deny that the Act advantages powerful speakers. "After all," it writes, the Act governs "*everyone* who uses social-media accounts to interact with other account holders, both 'citizen journalist' an 'institutional content creators.'" AOB 36. This is a non sequitur. Powerful speakers aren't powerful by virtue of their *social-media accounts*. They're powerful by virtue of their presence *outside* of social media. An average social media user is heard through social media. The *New York Times* is heard through its print newspapers and its website. Limiting access to social media muzzles the former but not the latter.

Because it targets speech using speaker- and content-based distinctions, the Act is subject to strict scrutiny.

II. Intermediate-Scrutiny Precedents Are Irrelevant.

Arkansas invokes three Supreme Court decisions—*Free Speech Coalition*, *TikTok*, and *Turner*—that applied intermediate scrutiny. But its reliance on these decisions is misplaced. Each involved circumstances far removed from the Act's broad regulation of fully protected social-media speech.

A. *Free Speech Coalition v. Paxton*

Arkansas relies heavily on *Free Speech Coalition*, 145 S. Ct. 2291, to argue for intermediate scrutiny. But that decision concerned age-gating only for content obscene to minors. It has nothing to say about the Act, which attempts to age-gate vast quantities of fully protected speech on social media.

To understand *Free Speech Coalition*'s limits, it is useful to examine two other key Supreme Court rulings—one about social media, the other about the rights of minors.

Packingham v. North Carolina involved a North Carolina law that made it a crime for a registered sex offender "to access a commercial social networking Web site." 582 U.S. 98, 101 (2017). The Court held that this law violated the First Amendment.

In the modern world, the Court explained, among "the most important places . . . for the exchange of views" are the "vast democratic forums of the Internet"—and of "social media in particular." *Id.* at 103 (cleaned up). Social media "can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard." *Id.* at 105. And everyone—"even convicted criminals"—can benefit from "access to the world of ideas" that exists online. *Id.* To "foreclose access to social media altogether," therefore, is "to prevent the user from

engaging in the legitimate exercise of First Amendment rights." *Id*. The Court concluded that, even under intermediate scrutiny (which the Court assumed, without deciding, applied), the North Carolina law impermissibly burdened adult sex offenders' right to send and receive speech.

At issue in *Brown v. Entertainment Merchants Assoc.*, 564 U.S. 786 (2011), was a California law that restricted the sale or rental of violent video games to minors. While it did "not mean to demean or disparage the concerns" behind the state's effort to protect children, the Court readily struck down the law as a violation of the First Amendment. *Id*. at 802.

At the heart of California's statute was an assumption that minors are second-class citizens under the First Amendment. But this, the Court held, is incorrect. "[M]inors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them." *Id*. at 793 (quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 212-213 (1975)). Although a state may protect minors from material that is obscene as to them, the Court observed, "that does not" mean the state has "a free-floating power to restrict ideas to which children may be exposed." *Id*. at 794-95. "Speech that is neither obscene

as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable to them." *Id.* at 795. This remains true even if the speech is interactive ("the player [of a video game] participates in the violent action on screen") or disgusting (there exists, in the game, "a racial or ethnic motive for [the] violence"). *Id.* at 799. Nor may the censorship be laundered through a parental-consent mandate—which is really just a government mandate "subject only to parental veto." *Id.* at 795 n.3. And so the Court concluded that California's law was subject to, yet miserably failed, strict scrutiny.

Arkansas picks a losing fight with *Brown*, claiming that more parents support limits on social media than on video games, and that videogames are less readily available to minors than social media. AOB 39 n.11. The state offers no support for either claim. Indeed, *Brown* cited no statistics with which Arkansas could offer a comparison. *Brown* likely saw no need to survey parental preferences because its holding did not turn on counting noses. Regardless how many or how few parents approve of a government mandate, that mandate is *still* a government mandate "subject only to parental veto." 564 U.S. at 795 n.3.

Back to *Free Speech Coalition*. A Texas law requires age verification on any commercial website more than one-third of which is speech

obscene to minors. The Court upheld this law under intermediate scrutiny.

Free Speech Coalition addressed precisely the category of speech—material obscene to minors—that *Brown* noted is amenable to special treatment. Minors have no right to view such material. And such material, *Free Speech Coalition* concluded, is "only partially" protected for adults. 145 S. Ct. at 2315. This means that the Court's First Amendment analysis will wholly differ depending on whether the speech at issue is simply what's found on social media (with its "vast democratic forums" that minors have a "significant" interest in seeing) or is instead what's found on pornographic websites (with their content that minors have no right, and adults, henceforth, only a "partial" right, to see).

How does the analysis differ? *Free Speech Coalition* revealed two key distinctions. *First*, for content obscene to minors, age-verification laws are now treated as akin to regulations on expressive conduct. *Id.* at 2315. When content obscene to minors is at issue, the state's regulatory power "*necessarily includes* the power to require proof of age." *Id.* at 2306 (emphasis added). In the context of adult content, in other words, an age-verification "statute can readily be understood as an effort to restrict minors' access" to speech unprotected as to them. *Id.* at 2309. In the context of social media, by contrast, *no such assumption applies*.

Restrictions in that realm remain, as they have always been, presumptively unconstitutional direct regulations on speech. See *Brown*, 564 U.S. 786.

Second, for content obscene to minors, a "burden" on speech is now qualitatively distinct, under the First Amendment, from a "ban" on speech. "When the First Amendment *partially* protects speech"—as is henceforth the case with, and only with, content obscene to minors—"the distinction between a ban and lesser burdens is" now "meaningful." *Free Speech Coal.*, 145 S. Ct. at 2315 n.12. *But* "for *fully protected speech*," now as ever, "the distinction between bans and burdens makes no difference to the level of [First Amendment] scrutiny." *Id.* Even after *Free Speech Coalition*, therefore, restrictions placed on *fully protected* social-media speech amount to a *burden* that triggers *strict scrutiny*.

In short, *Free Speech Coalition* has nothing to say about a *social media* regulation such as Arkansas's Act. In fact, *Free Speech Coalition* aligns perfectly with *Brown*. Only categories of historically unprotected speech—such as fraud, incitement, or (yes) obscenity—are outside the First Amendment. And "the obscenity exception does not," *Brown* said, "cover whatever a legislature finds shocking, but only depictions of 'sexual conduct.'" 564 U.S. at 793. So unlike in *Ginsberg v. New York*, 390 U.S. 629 (1968)—a precedent, relied on heavily by *Free Speech Coalition*,

involving material obscene to minors sold at brick-and-mortar stores—California's video-game law tried "to create a wholly new category" of unprotected speech (violent speech directed at children). 564 U.S. at 794. Allowing a legislature to do this—even for minors—would, *Brown* concluded, contravene "the judgment of the American people, embodied in the First Amendment, that the benefits of its restrictions on the Government outweigh the costs." *Id.* at 792 (cleaned up). Creating a new category was improper in *Brown*, as to violence in video games, and it would be improper here, as to the content on social media. *Free Speech Coalition*—which dealt with a category of speech that is historically unprotected—changes nothing.

B. *TikTok v. Garland*

Arkansas also relies on *TikTok v. Garland*, 145 S. Ct. 57. AOB 28, 36-37. The state draws from that decision two (erroneous) principles. First, under *TikTok*, in Arkansas's view, a law is subject to intermediate scrutiny whenever the state can point to something besides speech as the basis for its regulation. Here, Arkansas contends, the "something else" is the Act's focus on social media platforms' use of accounts. Second, under *TikTok*, in Arkansas's view, a law is subject to intermediate scrutiny when "special characteristics" justify as much. The "special

characteristic" here, Arkansas contends, is supposedly new "dangers" posed by social media.

To begin with, the premise in each of Arkansas's claims does not hold water. Arkansas cannot evade the First Amendment by purporting to target "accounts" rather than the free expression for which the accounts are used. And the notion that social media poses extreme "dangers" is a moral-panic talking point not borne out by the evidence. "We can't even really say anything definitive. And to the extent that we do find associations [between social media use and harms], they're extremely small." If Books Could Kill, supra. See also Masnick, supra; Ferguson, et al., supra; *Health Advisory on Social Media Use*, supra.

In any event, Arkansas's reading of *TikTok* is far too broad. The Court did not let the government simply point to a "something else" factor, or a "special characteristic," as an excuse for regulating speech. *TikTok* was about far more. In explaining its decision to apply intermediate, rather than strict, scrutiny, the Court invoked not only TikTok's "susceptibility to foreign control," but also TikTok's "scale," the "vast swaths of sensitive data" it collects, the "Government's national security concerns," and the "expedited time allowed" for the Court's "consideration" of the case. *TikTok*, 145 S. Ct. at 62-64, 68. Naturally, given how many matters played a dispositive role in its decision, the

Court repeatedly "emphasize[d] the inherent narrowness" of its "holding." *Id.* at 73. To drive the point home, the Court wrote: "A law targeting *any other speaker* would by necessity entail a distinct inquiry and separate considerations." *Id.* (emphasis added).

Arkansas's claim that the government can evade strict scrutiny, if only it can point to putative new "dangers" posed by a certain kind of speech, is especially pernicious. "The First Amendment's guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits." *United States v. Stevens*, 559 U.S. 460, 470 (2010). After all, the First Amendment itself is a judgment that the dangers of government censorship outweigh the dangers of more speech. *Id.* "Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it." *Id.*

TikTok is best understood as a one-off. It has nothing to say about whether strict scrutiny applies here (as it does).

C. *Turner Broadcasting System v. FCC*

As we have explained, the Act discriminates between content produced by institutional speakers (e.g., CNN, the *New York Times*) and everyday people (e.g., average users of Instagram or TikTok)—thus

triggering strict scrutiny. Arkansas tries, but fails, to erase this distinction by invoking *Turner Broadcasting System v. FCC*, 512 U.S. 622 (1994).

Turner subjected to intermediate scrutiny a law that required cable television operators to carry, via retransmission, local over-the-air broadcast channels. *Turner* observes that not "all regulations distinguishing between speakers warrant strict scrutiny." *Id*. at 653.

But again, speaker-based distinctions "are all too often" content-based distinctions. *Citizens Utd.*, 558 U.S. at 340. *Turner* was the rare case where the speaker-based distinction had nothing to do with content. The distinction in the law before it, the Court concluded, was "based upon the manner in which speakers transmit their messages to viewers, and not upon the messages they carry." *Turner*, 512 U.S. at 645. That is, "broadcasters, which transmit over the airwaves, [we]re favored, while cable programmers, which do not, [we]re disfavored." *Id*. The law revealed no "preference for the substance of what the favored speakers have to say (or aversion to what the disfavored speakers have to say)." *Id*. at 658.

Arkansas claims that, as with cable channels versus over-the-air channels, so with "social-media account[s] (e.g., Facebook account[s])" versus "non-social media accounts (e.g., . . . subscription account[s] with

The Washington Post)." AOB 36. But the analogy does not hold. While *Turner* concluded that the content on cable channels and over-the-air channels was equivalent, the content on Facebook and the *Washington Post* is *not* equivalent. A newspaper presents a finite, curated product reflecting the editorial judgments of a single institutional speaker, whereas a social-media platform hosts an open forum in which millions of ordinary users speak to one another directly, respond to each other (and institutional speakers) in real time, and collectively shape the flow of discourse. The subject matter inevitably diverges: newspapers select what editors deem newsworthy, while social media reflects what millions of users want to talk about. "Social media welcomes [new] voices into the conversation." Williams, supra.

If further proof were needed that this distinction is all too real, consider that European governments have repeatedly threatened to ban or heavily regulate X (former Twitter), while no one proposes banning *The Times* in Britain or *Le Monde* in France. See, e.g., Kim Willsher, *Macron Accused of Authoritarianism After Threat to Cut Off Social Media*, Guardian (July 5, 2023), tinyurl.com/3w8jwme4. The powers-that-be understand that social media offers a distinct form of content (some would say "disinformation"; others, "the people talking back").

Couldn't one reasonably conclude that cable versus over-the-air, too, is a content-based distinction? While the Act presents a very different situation from *Turner*, even when *Turner* is taken on its own terms, it is worth noting that *Turner* reached a questionable result for case-specific reasons. According to *Turner*, "Congress' overriding objective . . . was not to favor programming of a particular subject matter, viewpoint, or format, but rather to preserve access to free [broadcast] television programming." *Id.* at 646. In other words, the must-carry mandate was purely about "economic incentive[s]." *Id.* The cable operators, for their part, did little to argue otherwise, raising only "speculati[ve]" "hypothes[es]" about "a content-based purpose" for the law. *Id.* at 652. Here, by contrast, the Act is—as appellee vigorously argues—all about content. It hinders the diverse, comparatively unfiltered speech of ordinary users—and especially young people—in favor of the curated product presented by legacy media. That is the very definition of content discrimination.

* * *

Thanks to social media, the "public" is "no longer a passive recipient" of information. Jacob Mchangama, *Free Speech: A History From Socrates to Social Media* 389 (2022). "Social media has democratised the public sphere," providing a platform "for brilliant,

heterodox thinkers who would never have achieved prominence through more traditional routes." Williams, supra. Under the First Amendment, the state may not use regulation to "jealously guard[] the crumbing pillars of privileged access" to public attention. Mchangama, supra, at 389. Rather, "media outlets and experts must find new and innovative ways to earn the trust of [the] public." *Id*.

In the end, Arkansas's problem is with the power of speech itself. Minors spend time on social media because, when they're there, they see speech they're *interested in seeing*. Arkansas is concerned that the speech is *too powerful*. They think minors are like Don Quixote, transfixed by the power of stories and ideas. This problem—if it's really a problem—is not for Arkansas to fix. Under the First Amendment, the *strong effects* of speech are an *inherent part* of speech—not a ground for regulation. "Any other answer leaves the government in control of all of the institutions of culture, the great censor and director of which thoughts are good for us." *Am. Booksellers Assoc. v. Hudmut*, 771 F.2d 323, 330 (7th Cir. 1985) (Easterbrook, J.).

CONCLUSION

The Court should affirm.

January 27, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify:

This brief complies with the type-volume limits of Fed R. App. P. 29(a)(5) because it contains 4,579 words, excluding the parts exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced serif typeface, in 14-point font, using Microsoft Office 365.

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CERTIFICATE OF SERVICE

On January 27, 2026, a copy of this brief was filed and served on all registered counsel through the Court's CM/ECF system.

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