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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

NETCHOICE, *Plaintiff*, v. STATE OF ILLINOIS; OFFICE OF THE ILLINOIS SECRETARY OF STATE; ALEXI GIANNOULIAS, in his official capacity as the Illinois Secretary of State, *Defendants*.	Case No. 2026CH08789 Hon. ______________________

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

1. On June 1, 2026, Illinois passed a statewide tax targeting social media (the "Tax" or "Social Media Tax"). Public Act No. 104-0468, Article 5, § 5-5 (codified at 805 ILCS 5/15.98). This Tax imposes a per-user tax on large social media websites, singling them out for unique and discriminatory taxation. The Tax was rushed through the legislative process with little debate or public notice. The Tax was introduced in the Illinois House of Representatives on the last day of the legislative session via an amendment to S.B. 3019 and was adopted by the House the same day. The Senate concurred with the House amendment the next day, passing the measure.

2. Although the General Assembly labeled the Social Media Tax a "fee", the Social Media Tax is a "tax" under the Internet Tax Freedom Act (ITFA), which specifically defines the term "tax" to include impositions like the Social Media Tax regardless of their labeling.

3. The Social Media Tax becomes effective on January 1, 2027. Beginning on that date, social media websites must pay the Tax on a monthly basis. The amount of tax is based on the number of Illinois users from whom the social media website collects data within that month.

The tax rate escalates from $0.10 - $0.50 per user per month, as the amount of Illinois users increases.

4. The Social Media Tax is unconstitutional and otherwise unlawful for multiple independent reasons.

5. *First*, the ITFA preempts the Social Media Tax. ITFA is a federal statute that prohibits state and local governments from imposing "multiple or discriminatory taxes on electronic commerce." ITFA § 1101(a)(2). The Tax violates both prohibitions.

a. A tax is a prohibited "discriminatory" tax under ITFA if it is imposed on online services and is not generally imposed and legally collectible on "similar" offline services. Because the Social Media Tax is imposed exclusively on online social media websites, it is a discriminatory tax within the meaning of ITFA and is expressly preempted.

b. A tax is a prohibited "multiple" tax under ITFA when another tax is imposed on the same or essentially the same online service. Because the Social Media Tax is imposed on the same social media and data collection services as the City of Chicago's Social Media Amusement Tax, it is a multiple tax within the meaning of ITFA and is expressly preempted.

6. *Second*, the Tax violates the Commerce Clause of the U.S. Constitution because it is not fairly apportioned. *See Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 277-79 (1977).

7. The Social Media Tax is not fairly apportioned because the tax is sourced to Illinois based solely on a user's Illinois location. This sourcing regime reaches beyond the portion of the value that is fairly attributable to the social media websites' economic activity within Illinois.

8. The Social Media Tax is also not fairly apportioned because it fails the test of "internal consistency," which asks whether a hypothetical replication of the Social Media Tax in every state would result in multiple taxation. The Social Media Tax does not prescribe rules governing how to source the tax to Illinois according to user location.

9. For example, if both Illinois and Indiana imposed identical Social Media Taxes, a user that has a mailing address in Illinois, and accesses the social media website via an Indiana internet address, could trigger both states' taxes. The social media website may then be subject to a $1 monthly tax related to that user, rather than a $0.50 tax.

10. *Third*, the Social Media Tax violates the Commerce Clause of the U.S. Constitution because it discriminates against interstate commerce. *See Complete Auto*, 430 U.S. at 277-79. The Social Media Tax discriminates against interstate commerce because it targets for taxation social media businesses headquartered outside of Illinois.

11. *Fourth*, the Social Media Tax violates the Due Process Clause of the U.S. Constitution because it taxes extraterritorial values. *See Allied-Signal, Inc. v. Dir., Div. of Taxation*, 504 U.S. 768, 777 (1992); *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159, 164 (1983).

12. *Fifth*, a "discriminatory tax on the press burdens rights protected by the First Amendment." *Ark. Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 227 (1987). Selective taxation of the media—like the Social Media Tax here—poses a "particular danger of abuse" and is presumptively unconstitutional. *Id.* at 228; *see, e.g.*, *Minneapolis Star & Trib. Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585-93 (1983); *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250-51 (1936).

PARTIES & STANDING

13. Plaintiff NetChoice is a District of Columbia nonprofit trade association whose members engage in electronic commerce. NetChoice's mission is to promote online commerce and speech and to increase consumer access and options via the Internet, while minimizing burdens that could prevent businesses from making the Internet more accessible and useful. NetChoice's members are listed at NetChoice, About Us, https://perma.cc/5QXR-E9H7.

14. NetChoice has associational standing to challenge the Social Media Tax because: (1) taxed NetChoice members have individual standing to sue in their own right; (2) challenging the Social Media Tax is germane to NetChoice's purpose; and (3) NetChoice's members' individual participation as parties is unnecessary in this purely legal challenge. *See Ill. Rd. & Transp. Builders Ass'n v. Cnty. of Cook*, 2022 IL 127126, ¶ 14 (citing federal standard from *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)).

15. Based on the Social Media Tax's definitions, beginning January 1, 2027, some NetChoice members will be directly subject to the Social Media Tax as "social media platforms" and will face serious legal consequences if they fail to pay the Social Media Tax. *See* 805 ILCS 5/15.98(b), (g).

16. This controversy is ripe. The General Assembly passed the Social Media Tax on June 1, 2026, and the Governor signed it into law on June 16, 2026. The Social Media Tax will take effect on January 1, 2027. At that time, NetChoice's members must comply with and pay the Social Media Tax. NetChoice's members will be subject to penalties for failure to comply with the Tax. These members are subject to costs in advance of implementation to comply with the Social Media Tax. These compliance costs are not taxes subject to protest procedures and cannot be recovered from the State in an action for damages.

17. Through the Office of the Illinois Secretary of State, employees, agents, and/or elected officials, the Defendant State of Illinois will administer and collect the Social Media Tax.

18. Defendant Office of the Illinois Secretary of State is the department of the State of Illinois that is responsible for administering the Social Media Tax and collecting Social Media Tax revenue. Social Media Tax amounts are due and payable to the Secretary. 805 ILCS 5/15.98(b). The Office of the Illinois Secretary of State is also responsible for collecting from social media websites monthly reports of the "average number of monthly users of the platform located in the State of Illinois." 805 ILCS 5/15.98(a). The Office of the Illinois Secretary of State is also responsible for auditing social media websites to enforce the Social Media Tax. 805 ILCS 5/15.98(g).

19. Defendant Alexi Giannoulias is sued in his official capacity as the Illinois Secretary of State.

JURISDICTION

20. This Court has subject matter jurisdiction over this matter under 735 ILCS 5/2-701, and under Article VI, § 9 of the Illinois Constitution because Plaintiff seeks a declaratory judgment that the Social Media Tax violates ITFA, the Commerce Clause of the United States Constitution, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and the First Amendment to the United States Constitution.

21. This Court has personal jurisdiction over Defendants because: (i) the State of Illinois is an Illinois entity with its principal place of business in Illinois; (ii) the Office of the Illinois Secretary of State is a subdivision of the State of Illinois; (iii) the Secretary of State resides in Illinois; and (iv) the conduct directed and enforced by the State, the Office of the Illinois Secretary of State, and the Secretary of State against certain of Plaintiff's members occurred, is occurring, and will occur in Illinois. 735 ILCS 5/2-209(a)(1), (b)(2), (b)(4), (c).

22. Venue is proper in this Court because this action is brought against the State or any of its officers, employees, or agents acting in an official capacity, seeking declaratory or injunctive relief against a State statute based on an alleged violation of the United States Constitution. 735 ILCS 5/2-101.5(a).

ILLINOIS SOCIAL MEDIA TAX

23. On January 29, 2026, the Illinois Senate introduced S.B. 3019. The bill passed the Senate on April 14, 2026. On May 31, 2026, House Floor Amendment No. 1 was introduced, which—for the first time—proposed the Social Media Tax. After only a few hours of consideration, the bill passed the House later that day. The Senate concurred with the House's amendments the next day. On June 16, 2026, Governor Pritzker signed S.B. 3019.

24. The Social Media Tax will take effect on January 1, 2027. 805 ILCS 5/15.98(b). The first report and payment is due February 14, 2027. 805 ILCS 5/15.98(b).

25. **Entities Subject to the Social Media Tax.** The Social Media Tax is imposed on "social media platforms." 805 ILCS 5/15.98(b).

26. The Social Media Tax defines a "social media platform" as a "website or internet medium" that:

a. "Permits a person to become a registered user, establish an account, or create a profile for the purpose of allowing users to create, share, and view user-generated content through that account or profile";

b. "Enables one or more users to generate content that can be viewed by other users of the medium"; and

c. "Primarily serves as a medium for users to interact with content generated by other users of the medium." 805 ILCS 5/15.98(d).

27. No offline businesses are subject to the Social Media Tax. The Social Media Tax is limited to social media websites' services that are delivered over the Internet.

28. The Social Media Tax excludes certain services. Specifically, the Social Media Tax excludes from taxation social media websites with 100,000 or fewer Illinois users from whom the social media website collects data within a month. 805 ILCS 5/15.98(b). It also excludes any "not-for-profit organization, as defined in the General Not For Profit Corporation Act of 1986." *Id.*

29. NetChoice's members include social media companies that provide social media website services throughout the United States, including Illinois, and have over 100,000 Illinois users from whom they collect data within a month. These members are thus subject to the Social Media Tax.

30. **Social Media Tax Imposition: $0.10 – $0.50 Per User Monthly Tax**. A social media company that has over 100,000 Illinois users is subject to a 10 – 50 cent tax *each month* for *each Illinois user* of its social media website services. 805 ILCS 5/15.98(b).

31. The Social Media Tax rate is graduated based on the size of the social media website:

a. Social media websites with over 100,000 Illinois users but not more than 500,000 Illinois users are subject to the Social Media Tax at the rate of $0.10 per month multiplied by the number of Illinois users over 100,000 but not more than 500,000;

b. Social media websites with over 500,000 Illinois users but not more than 1,000,000 Illinois users are subject to the Social Media Tax at the rate of $40,000, plus $0.25 per month multiplied by the number of Illinois users over 500,000 but not more than 1,000,000; and

c. Social media websites with over 1,000,000 Illinois users are subject to the Social Media Tax at the rate of $165,000, *plus* $0.50 per month multiplied by the number of Illinois users over 1,000,000. 805 ILCS 5/15.98(b).

32. Beginning on January 1, 2028, the amount of Social Media Tax charged to social media websites will "be increased by an amount equal to the annual unadjusted percentage increase in the Consumer Price Index for the 12-month period ending with the March preceding each July 1, including all previous adjustments, rounded down to the nearest whole number." 805 ILCS 5/15.98(e); *see* 805 ILCS 5/15.98(d) (defining "Consumer Price Index").

33. The Social Media Tax provides no credit for taxes paid to other jurisdictions, nor is it apportioned.

34. Companies required to pay the Social Media Tax do not receive any specific privilege, service, or benefit in exchange for paying the tax.

35. **Illinois Users.** The Social Media Tax provides no guidance as to how to determine whether a user of the social media website is "located" in Illinois. 805 ILCS 5/15.98(a)-(b).

36. **Reports.** The first report is due February 14, 2027. Thereafter, within 14 days of the start of each month, Illinois requires each social media website to submit to the Secretary "a report of the average number of monthly users of the platform located in the State of Illinois." 805 ILCS 5/15.98(a). The amount of Social Media Tax attributable to the prior month must be paid to the Secretary by that date. 805 ILCS 5/15.98(b).

37. **The Social Media Tax Restricts Geographic Price Differentiation to Recoup the Tax.** Illinois bars a social media website from "vary[ing] the cost of access, features, services, or in-app purchases for any user based on the geographic origin of the user's login, activity, or

account registration for the purposes of recouping the [Social Media Tax].” 805 ILCS 5/15.98(f). Individual users may bring a civil action in the circuit court to enforce this provision. *Id.*

38. **Penalties**. If a social media website fails or refuses to pay the Social Media Tax, the Secretary will add to the Social Media Tax deficiency “an amount equal to 100%” of the unpaid Social Media Tax, along with penalties, each month until the Social Media Tax is paid. 805 ILCS 5/15.98(b).

39. The Secretary of State may also impose general penalties that are not Social Media Tax-specific:

a. If a social media website corporation has not paid the Social Media Tax, the Secretary “shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any corporation, domestic or foreign, organized under or subject to the provisions of [the Business Corporation Act of 1983].” 805 ILCS 5/15.85(a).

b. The Secretary will not file “any document required or permitted to be filed by [the Business Corporation Act of 1983], which has an effective date other than the date of filing until there has been paid by such corporation to the Secretary of State” the Social Media Tax. 805 ILCS 5/15.85(b).

c. Social media website corporations that have not paid the Social Media Tax also cannot “maintain any civil action” until it has been “paid in full.” 805 ILCS 5/15.85(c).

40. **Use of Social Media Tax**. The Office of the Illinois Secretary of State will deposit the first $170,000 of Social Media Tax per month into the Secretary of State Special Services Fund.

The remainder of monthly Social Media Tax collected will be deposited into the Common School Fund. 805 ILCS 5/15.98(c).

41. **The Social Media Tax and the Chicago Social Media Amusement Tax Apply to the Same Electronic Commerce, Causing Multiple Taxation of Chicago-Sourced Services.** Effective January 1, 2026, the City of Chicago imposed the Social Media Amusement Tax ("SMAT") on "the activity of social media amusement." Chicago Mun. Code § 4-156-1020(a).

42. The SMAT is imposed on "social media businesses," defined as any "for-profit entity that: (a) provides individuals with access to social media for the activity of social media amusement; and (b) collects, maintains, uses, processes, sells, or shares consumer data, other than consumer contact information, in support of the entity's business activities." *Id.* §§ 4-156-1010, 4-156-1020(b).

43. The SMAT imposes a 50-cent tax each month for every Chicago consumer of a social media business over 100,000 from whom such business collects consumer data. *Id.* § 4-156-1020(b).

44. "Social media amusement" means "engagement with media content delivered through the use of social media for the substantial purpose of entertainment and enjoyment." *Id*. § 4-156-1010.

45. "Social media" under the SMAT means "websites, applications, products, and internet platforms that allow consumers to view, share, and otherwise engage with images, videos, and audio presented in types and formats such as performances, promotions, memes, augmented reality, artificial intelligence, or live streams. 'Social media' does not include any websites, applications, products, or internet platforms in which substantially all of the content made available to users (excepting incidental interactive user functions such as chat or comments) is individually

created or selected for inclusion by those who maintain the website, application, product, or platform." *Id*.

46. The SMAT provides no credit for taxes paid to other jurisdictions, nor is it apportioned.

47. The SMAT is imposed on the same or essentially the same online social media services as the Social Media Tax.

CLAIMS

COUNT I
47 U.S.C. § 151 (NOTE)
FEDERAL PREEMPTION UNDER
THE INTERNET TAX FREEDOM ACT—DISCRIMINATORY TAX

48. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

49. Congress enacted ITFA in 1998 "to enhance" the development of electronic commerce conducted over the Internet and "eliminate[] efforts that will impede its growth" by restricting the kinds of taxes that state and local governments could impose on Internet-based transactions. H.R. Rep. No. 105-570, 105th Cong., 2d Sess., at 7 (1998).

50. ITFA prohibits state and local governments from imposing "[m]ultiple or discriminatory taxes on electronic commerce." ITFA § 1101(a)(2).

51. A tax on electronic commerce is "discriminatory" under ITFA if it applies to electronic commerce but "is not generally imposed and legally collectible by such State . . . on transactions involving similar property, goods, services, or information accomplished through other means." ITFA § 1105(2)(A). The statute prohibits states and localities from singling out electronic commerce for taxation.

52. The Social Media Tax is discriminatory because it singles out and targets online social media services for taxation and is not imposed on any offline services.

53. The Social Media Tax meets all of the requirements of a "discriminatory tax" under ITFA. Specifically, it is: (1) a "tax"; (2) imposed by a State; (3) on electronic commerce; and (4) is not generally imposed and legally collectible by Illinois on any transaction involving similar services accomplished through other (*i.e.*, offline) means.

a. Tax. ITFA defines a "tax" as "any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred." *Id.* § 1105(8)(A)(i). The Social Media Tax is a "tax" for purposes of ITFA because it is a charge imposed by the State for the purpose of generating revenues for governmental purposes and is not a fee imposed for a specific privilege, service, or benefit conferred. *See* 805 ILCS 5/15.98(c) (depositing the Social Media Tax into the Secretary of State Special Services Fund and the Common School Fund).

b. Imposed by a State. The Tax is imposed by the State of Illinois.

c. On Electronic Commerce. ITFA defines "electronic commerce" as "any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration[.]" ITFA § 1105(3). Social media websites' activities subject to the Social Media Tax constitute "electronic commerce." *See id*. The definition of "social media platform" limits the Social Media Tax to only electronic commerce: a "website or internet medium." 805 ILCS 5/15.98(d).

d. Not Generally Imposed on Offline Commerce. Because the Social Media Tax is imposed exclusively on online social media services, it is not generally imposed and legally collectible on any transaction involving similar services accomplished through offline means. A tax that is imposed exclusively on Internet-delivered services is a discriminatory tax under ITFA. As Rep. Christopher Cox, who co-sponsored ITFA, explained in the House Committee Report:

> Taken together, [ITFA's "discriminatory tax" definition] mean[s] that property, goods, services, or information that are sold exclusively over the Internet—with no comparable off-line equivalent—would be protected from taxation for the duration of the moratorium. Examples of such transactions include, but are not limited to, electronic mail over the Internet, Internet site selections, Internet bulletin boards, and Internet search services.

H.R. Rep. No. 105-570, at 33.

54. In *Performance Marketing Association, Inc. v. Hamer*, 2013 IL 114496, the Illinois Supreme Court held that an Illinois use tax statute violated ITFA. The Illinois statute imposed a use tax collection responsibility on retailers that advertised their products using digital, Internet-based marketing to Illinois consumers. In contrast, the use tax did not impose a comparable tax collection responsibility on retailers that advertised using non-Internet-based methods. Because the tax was targeted specifically at Internet-based advertising, the Illinois Supreme Court concluded that the tax was a "discriminatory tax on electronic commerce within the meaning of the ITFA," was "expressly preempted by the ITFA," and was "therefore void and unenforceable." *Id.* at ¶ 23.

55. On August 14, 2026, the Maryland Tax Court held that the Maryland Digital Advertising Gross Revenues Tax violates ITFA because the tax is imposed on online advertising services but not offline advertising services. *See Apple Inc., Google LLC, Peacock TV, LLC v. Comptroller of Maryland*, Dkt. Nos. 23-DA-OO-0456, 23-DA-OO-0649, 23-DA-OO-0654 (Md. Tax Ct. Aug. 14, 2026). Because the Social Media Tax similarly imposes a tax obligation on electronic commerce that is not imposed on any similar offline commerce (such as offline data

collection), it constitutes a "discriminatory tax on electronic commerce" within the meaning of ITFA and is expressly preempted by federal law.

56. Similar to the tax collection obligation struck down in *Performance Marketing Association* and the online advertising services tax struck down in *Apple*, *Google*, and *Peacock*, the Social Media Tax singles out and targets online social media businesses for taxation and is not imposed on any offline services.

57. Because the Tax imposes a tax obligation on electronic commerce that is not generally imposed on similar offline commerce, it constitutes a "discriminatory tax on electronic commerce" within the meaning of ITFA and is expressly preempted by federal law.

58. The Social Media Tax should therefore be declared invalid under ITFA and the Supremacy Clause of the United States Constitution.

59. Unless declared invalid, preempted, and enjoined, the Social Media Tax will unlawfully deprive Plaintiff's members of their rights and will irreparably harm Plaintiff's members.

COUNT II
47 U.S.C. § 151 (NOTE)
FEDERAL PREEMPTION UNDER
THE INTERNET TAX FREEDOM ACT—MULTIPLE TAX

60. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

61. In addition to prohibiting "discriminatory" taxes on electronic commerce, ITFA also prohibits "multiple" taxes on electronic commerce. ITFA § 1101(a)(2).

62. A "multiple" tax is a tax that is imposed "on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision thereof (whether or not at the same rate or on the same basis), without a credit . . . for taxes paid in other jurisdictions." ITFA § 1105(6)(A).

63. The Social Media Tax is a prohibited multiple tax because: (1) the Social Media Tax is imposed by the State of Illinois and the SMAT is imposed by the City of Chicago, a political subdivision of the State of Illinois; (2) the Social Media Tax and SMAT are imposed on electronic commerce; (3) the Social Media Tax is imposed on the same or essentially the same electronic commerce as the SMAT; and (4) the Social Media Tax does not provide a credit for taxes paid in other jurisdictions.

64. For example, consider a social media business that provides social media services to, and collects consumer data from, two million Illinois users per month, one million of whom are located in Chicago. The social media business is then subject to both the Social Media Tax and SMAT on its one million users located in Chicago. The social media business would owe both $500,000 Social Media Tax ($0.50 tax rate x 1 million Chicago users) and $500,000 SMAT ($0.50 tax rate x 1 million Chicago users) on the same Chicago users.

65. The Social Media Tax should therefore be declared invalid under ITFA and the Supremacy Clause of the United States Constitution.

66. Unless declared invalid, preempted, and enjoined, the Social Media Tax will unlawfully deprive Plaintiff's members of their rights and will irreparably harm Plaintiff's members.

COUNT III
VIOLATION OF THE U.S. CONSTITUTION COMMERCE CLAUSE'S REQUIREMENT OF FAIR APPORTIONMENT

67. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

68. The U.S. Constitution's Commerce Clause provides that: "The Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const., art. I, § 8, cl. 3.

69. To survive Commerce Clause scrutiny, a state tax must meet a four-part test articulated by the Court in *Complete Auto*, 430 U.S. at 277-79. Specifically, a state tax must:

a. be applied to an activity with a substantial nexus with the taxing state;

b. be fairly apportioned to activities carried on by the taxpayer in the state;

c. not discriminate against interstate commerce; and

d. be fairly related to services provided by the state.

70. The Social Media Tax fails the *Complete Auto* Test because it is not fairly apportioned.

71. In order for a tax to be fairly apportioned to withstand dormant Commerce Clause scrutiny, it must be internally and externally consistent. *Container Corp.*, 463 U.S. at 169.

72. *Internal consistency.* The internal consistency test looks to a tax's structure to assess whether application of an identical tax by every State would place interstate commerce at a disadvantage compared with intrastate commerce. *Comptroller of Md. v. Wynne*, 575 U.S. 542, 562 (2015) (collecting cases).

73. In assessing internal consistency, the U.S. Supreme Court requires a hypothetical replication of the challenged tax. Pursuant to this replication, if every State imposed a tax identical to the challenged tax and multiple taxation would result, the tax disadvantages interstate commerce relative to intrastate commerce. That disadvantage violates the Commerce Clause. *E.g.*, *Armco Inc. v. Hardesty*, 467 U.S. 638, 645 (1984); *Am. Trucking Ass'ns, Inc. v. Scheiner*, 483 U.S. 266, 284 (1987).

74. If each state adopted the Social Media Tax, each state would apply the tax based on those users "located" in such state. 805 ILCS 5/15.98(a)-(b). As there is no guidance to determine where a user is "located," each state may determine location on a different basis. For example,

Illinois may determine user location by mailing address, while Indiana would determine user location by internet protocol address. Thus, a social media website may owe $0.50 per month of Illinois Social Media Tax and $0.50 per month of Indiana Social Media Tax for a user that has an Illinois mailing address but accesses the website via an Indiana internet protocol address.

75. The Social Media Tax violates the Commerce Clause because it is not internally consistent. The Social Media Tax provides:

a. No credit for taxes paid to other states on the same social media and data collection services; and

b. No explanation for how to source the Social Media Tax to Illinois according to user location, thereby impermissibly risking multiple taxation of the same social media and data collection services.

76. *External consistency.* The Social Media Tax also violates the Commerce Clause because it is not externally consistent. "External consistency . . . looks . . . to the economic justification for the state's claim upon the value taxed, to discover whether a state's tax reaches beyond that portion of value that is fairly attributable to economic activity within the taxing state." *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 185 (1995).

77. Social media website services are subject to the Social Media Tax solely on the basis of a user's Illinois location. This sourcing provision excludes the location of any activities giving rise to the social media and data collection activities. The Social Media Tax thus reaches beyond the portion of the value that is fairly attributable to the social media websites' economic activity within Illinois, and thereby violates the requirement of external consistency.

78. The Social Media Tax should therefore be declared invalid under the Commerce Clause of the United States Constitution.

79. Unless declared invalid, preempted, and enjoined, the Social Media Tax will unlawfully deprive Plaintiff's members of their rights and will irreparably harm Plaintiff's members.

COUNT IV
VIOLATION OF THE U.S. CONSTITUTION COMMERCE CLAUSE'S PROHIBITION ON DISCRIMINATION AGAINST INTERSTATE COMMERCE

80. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

81. Beyond being unfairly apportioned, the Social Media Tax also fails the *Complete Auto* test because it discriminates against interstate commerce.

82. A determination that a state tax violates the Commerce Clause "may be made on the basis of either discriminatory purpose or discriminatory effect." *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 270 (1984).

83. The Social Media Tax discriminates against interstate commerce because it targets for taxation:

a. Social media website entities headquartered outside of Illinois; and

b. Interstate commerce.

84. The Social Media Tax discriminates against interstate commerce and therefore is unlawful under the Commerce Clause of the U.S. Constitution and should be declared invalid.

85. Unless declared invalid, preempted, and enjoined, the Social Media Tax will unlawfully deprive Plaintiff's members of their rights and will irreparably harm Plaintiff's members.

COUNT V
VIOLATION OF THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE'S PROHIBITION ON EXTRATERRITORIAL TAXATION

86. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

87. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that a State shall not "deprive any person of life, liberty, or property, without due process of law."

88. The Due Process Clause forbids states from taxing "extraterritorial values." *Container Corp.*, 463 U.S. at 164 (1983); *see also Allied-Signal*, 504 U.S. at 777.

89. The U.S. Constitution's Due Process Clauses "demand[ ] that there exist some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax, as well as a rational relationship between the tax and the values connected with the taxing State." *MeadWestvaco Corp. v. Ill. Dep't of Rev*., 553 U.S. 16, 24 (2008) (internal quotations omitted).

90. "The broad inquiry subsumed in [this] constitutional requirement[ ] is whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state – that is, whether the state has given anything for which it can ask return." *MeadWestvaco*, 553 U.S. at 24-25 (internal quotations omitted).

91. For the same reasons as in Count III, the Social Media Tax violates the Due Process Clause of the U.S. Constitution because it taxes extraterritorial values. *See South Dakota v. Wayfair, Inc*., 585 U.S. 162, 177 (2018) ("significant parallels" between Commerce Clause and Due Process Clause restrictions).

92. Because the Social Media Tax taxes extraterritorial values, it is unlawful under the Due Process Clause of the U.S. Constitution and should be declared invalid.

93. Unless declared invalid and enjoined, the Social Media Tax will unlawfully deprive Plaintiff's members of their rights and will irreparably harm Plaintiff's members.

COUNT VI
VIOLATION OF THE FIRST AMENDMENT,
AS INCORPORATED THROUGH THE FOURTEENTH AMENDMENT

94. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

95. The First Amendment of the U.S. Constitution provides that "Congress shall make no Law . . . abridging the Freedom of Speech, or of the Press; or the Right of the People peaceably to assemble . . . ." U.S. Const. amend. I. The protections of the First Amendment have been incorporated by the Due Process Clause of the Fourteenth Amendment to the Constitution to restrict States.

96. On August 14, 2026, the Maryland Tax Court held that the Maryland Digital Advertising Gross Revenues Tax violates the First Amendment because it discriminates among online speakers and publishers. *See Peacock TV, LLC v. Comptroller of Maryland*, Dkt. No. 23-DA-OO-0654 (Md. Tax Ct. Aug. 14, 2026). This Social Media Tax should be invalidated as well.

97. **Illinois's Social Media Tax implicates the First Amendment.** The U.S. Supreme Court's "cases clearly establish that a discriminatory tax on the press burdens rights protected by the First Amendment." *Ark. Writers' Project*, 481 U.S. at 227; *see Minneapolis Star*, 460 U.S. at 579; *Grosjean*, 297 U.S. at 251; *see also Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 659 (1994).

98. These U.S. Supreme Court precedents are not limited to traditional media outlets or the journalistic press. The Supreme Court has explained that the First Amendment's "liberty of the press . . . comprehends every sort of publication which affords a vehicle of information and opinion." *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938). Thus, the "press" as contemplated by Supreme Court First Amendment precedent includes "social media" websites.

99. The Social Media Tax is not generally applicable and implicates two kinds of discrimination that the U.S. Supreme Court has recognized. Each would independently subject the Social Media Tax to heightened First Amendment scrutiny.

100. First, the Social Media Tax "treat[s] the press"—*i.e.*, social media websites—"differently from other enterprises." *Ark. Writers' Project*, 481 U.S. at 228.

101. Second, "the tax target[s] a small group of" social media businesses, based on their size. *Id*.

102. In addition, the Social Media Tax restricts regulated social media websites from varying prices for access, features, services, or in-app purchases based on a user's geographic origin when the purpose is to recoup the fee. Specifically, the Social Media Tax provides that "social media platform shall not vary the cost of access, features, services, or in-app purchases for any user based on the geographic origin of the user's login, activity, or account registration for the purposes of recouping the fee under this Section." 805 ILCS 5/15.98(f). This restriction regulates how covered websites may price access to their services when seeking to recoup the fee.

103. **The Social Media Tax fails any level of First Amendment scrutiny.** The Social Media Tax is presumptively unconstitutional and cannot survive strict or heightened First Amendment scrutiny.

104. Illinois lacks a sufficient governmental interest in imposing the discriminatory Social Media Tax.

105. The Social Media Tax is not properly tailored to any articulated interest.

106. The Social Media Tax therefore violates the First Amendment and should be declared invalid.

107. Unless declared invalid and its collection enjoined, the Social Media Tax will unlawfully deprive Plaintiff's members of their fundamental First Amendment rights and will irreparably harm Plaintiff's members.

RELIEF REQUESTED

Plaintiff respectfully requests an order and judgment:

A. declaring that the Illinois Social Media Platform Fee, 805 ILCS 5/15.98, is unlawful;

B. declaring that the Illinois Social Media Platform Fee, 805 ILCS 5/15.98, is unlawful as preempted by the Internet Tax Freedom Act, 47 U.S.C. § 151 (note);

C. declaring that the Illinois Social Media Platform Fee, 805 ILCS 5/15.98, violates the Commerce Clause of the U.S. Constitution;

D. declaring that the Illinois Social Media Platform Fee, 805 ILCS 5/15.98, violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;

E. declaring that the Illinois Social Media Platform Fee, 805 ILCS 5/15.98, violates the First Amendment to the U.S. Constitution;

F. enjoining the Defendants from enforcing and collecting the Illinois Social Media Platform Fee, 805 ILCS 5/15.98, including as against NetChoice's members;

G. entering judgment for Plaintiff; and

H. awarding Plaintiff all other such relief as the Court deems proper and just.

Dated: September 11, 2026

Respectfully submitted,

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