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

NETCHOICE, *Plaintiff*, v. STATE OF ILLINOIS; ILLINOIS DEPARTMENT OF REVENUE; DAVID HARRIS, in his official capacity as Director, *Defendants*.	)	Case No. 2026CH08791 Hon. ______________________

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

1. On May 31, 2026—the final day of the Illinois House of Representatives' 2026 legislative session—the House proposed a Targeted Advertising Services Tax ("Targeted Advertising Tax"). Public Act No. 104-0468, Article 1, §§ 1-1 *et seq.* (codified at 35 ILCS 190/1-1 *et seq.*). The Targeted Advertising 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. The Targeted Advertising Tax becomes effective on January 1, 2027. Beginning on that date, providers of targeted advertising services must pay the tax on a monthly basis. The amount of tax is 10% of the gross receipts derived from the targeted advertising services provided in Illinois.

3. The Targeted Advertising Tax purports to apply to targeted advertising services in a technologically neutral manner, applying to targeted advertising services "conveyed through a

digital interface *or any other method of delivery*." § 1-10 (emphasis added). But in practice the Targeted Advertising Tax is imposed solely on Internet-based advertising transactions.

4. The Targeted Advertising Tax is materially similar to Maryland's Digital Advertising Gross Revenues Tax, which was recently invalidated as contrary to federal law for multiple independent reasons. *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).

5. Illinois' Targeted Advertising Tax should likewise be invalidated as unconstitutional and otherwise unlawful for multiple independent reasons.

6. *First*, the Internet Tax Freedom Act ("ITFA") preempts the Targeted Advertising Tax. ITFA is a federal statute that prohibits state and local governments from imposing "discriminatory taxes on electronic commerce." ITFA § 1101(a)(2). A tax on an online service violates ITFA unless it is also generally imposed and legally collectible on transactions involving "similar" offline services. Because the Targeted Advertising Tax applies only to internet-based targeted advertising services, it is a discriminatory tax that is expressly preempted by federal law.

7. *Second*, the Targeted Advertising Tax violates the Commerce Clause of the U.S. Constitution because the Tax is not fairly apportioned. *See Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 287 (1977).

8. The Targeted Advertising Tax is not fairly apportioned because the tax is sourced to Illinois based solely on a user-consumer's Illinois location. The sourcing regime reaches beyond the portion of the value that is fairly attributable to the targeted advertising services' economic activity within Illinois.

9. The Targeted Advertising Tax is also not fairly apportioned because it fails the "internal consistency" test, which asks whether a hypothetical replication of the Targeted Advertising Tax in every state would result in multiple taxation. The Targeted Advertising Tax does not specify how to prioritize technical and nontechnical factors and user address information to source targeted advertising service gross receipts to Illinois.

10. For example, if both Illinois and Indiana imposed identical Targeted Advertising Taxes, a user-consumer that has a mailing address in Illinois and accesses the targeted advertising service via an Indiana internet protocol address could trigger both states' taxes. The provider of targeted advertising services may then be subject to both Illinois and Indiana taxes on 10% of the same gross receipts related to that user-consumer's access to the advertisement.

11. *Third*, the Targeted Advertising Tax violates the Commerce Clause of the U.S. Constitution because it discriminates against interstate commerce. *See Complete Auto*, 430 U.S. at 287. Specifically, it targets for taxation providers of targeted advertising services headquartered outside of Illinois.

12. *Fourth*, the Targeted Advertising 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).

13. *Fifth*, the Targeted Advertising Tax violates the First Amendment to the United States Constitution. 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 speech 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

14. 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.

15. NetChoice has associational standing to challenge the Targeted Advertising Tax because: (1) taxed NetChoice members have individual standing to sue in their own right; (2) challenging the Targeted Advertising 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)).

16. Based on the Targeted Advertising Tax's definitions, Public Act No. 104-0468, art. 1, § 1-10, some NetChoice members are directly subject to the Targeted Advertising Tax as "providers of targeted advertising services" and could face serious legal consequences if they violate the Targeted Advertising Tax. *See* §§ 1-15(a), 1-50.

17. This controversy is ripe. The General Assembly passed the Targeted Advertising Tax on June 1, 2026, and the Governor signed it into law on June 16, 2026. The Targeted Advertising Tax will take effect on January 1, 2027. At that time, NetChoice's members must comply with and pay the Targeted Advertising Tax. NetChoice's members will be barred from engaging in business as providers of targeted advertising services if they do not obtain a certificate of registration from the Department; they will also be subject to felony penalties. These members are subject to costs in advance of implementation to comply with the Targeted Advertising Tax.

These compliance costs are not taxes subject to protest procedures and cannot be recovered from the State in an action for damages.

18. Through the Illinois Department of Revenue, employees, agents, and/or elected officials, the Defendant State of Illinois will administer and collect the Targeted Advertising Tax.

19. Defendant Illinois Department of Revenue ("Department" or "Department of Revenue") is the department of the State of Illinois that is responsible for revenue collection. Targeted Advertising Taxes paid pursuant to the Targeted Advertising Tax are due and payable to the Department of Revenue. § 1-35. The Department of Revenue is also responsible for administering the issuance of certificates of registration to providers of targeted advertising services. §§ 1-30, 1-35.

20. Defendant David Harris is sued in his official capacity as the Director of the Department of Revenue.

JURISDICTION

21. 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 Targeted Advertising 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.

22. 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 Department of Revenue is a subdivision of the State of Illinois; (iii) the Director of the Department of Revenue resides in Illinois; and (iv) the conduct directed and enforced by the State, the Department of Revenue, and the Director of the Department of Revenue 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).

23. 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 TARGETED ADVERTISING SERVICES TAX

24. 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 Targeted Advertising 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.

25. The Targeted Advertising Tax will take effect on January 1, 2027. § 1-15(a). The first return and payment is due February 20, 2027. § 1-35(a).

26. **Targeted Advertising Tax Imposition: 10% of Gross Receipts**. The Targeted Advertising Tax is imposed at the rate of 10% of the gross receipts derived from the "targeted advertising services" provided in Illinois. § 1-15(a).

27. "Targeted advertising services" are defined as "any *programmatic* written, oral, or graphic statement or representation conveyed through a *digital interface or any other method of delivery*, including, but not limited to, banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services that *use personal information about the people to whom the ads are being served*." § 1-10 (emphases added).

28. Advertising services that: (1) are programmatic; (2) are, or are comparable to, banner advertising, search engine advertising, and interstitial advertising; and (3) use personal information about the people to whom the ads are being served, are exclusively Internet-based advertising transactions.

29. "Programmatic" advertising services are available exclusively via the Internet. The statute defines "programmatic" advertising services as services that "may be sold in real time by employing technology that uses computer-driven or software-driven workflow or machine learning algorithms to deliver advertisements to user-consumers based on user-advertiser-defined parameters, including precise user-consumer targeting data such as user-consumer: (1) Geographic locations; (2) Types of devices; (3) Recent online search behaviors; (4) Browsing history; (5) Shopping history; (6) Purchase history; and (7) Biographical and other information compiled in databases." § 1-10.

30. The Targeted Advertising Tax is not imposed on non-Internet forms of advertising, such as billboards, magazines, newspapers, and other printed media.

31. The Targeted Advertising Tax provides no credit for taxes paid to other jurisdictions, nor is it apportioned.

32. Companies required to pay the Targeted Advertising Tax do not receive any specific privilege, service, or benefit in exchange for paying the tax.

33. **Scope and Exemptions Under the Targeted Advertising Tax.** The Targeted Advertising Tax is imposed on "providers of targeted advertising services." Providers of targeted advertising services are those that are "engaged in the occupation of providing targeted advertising services." § 1-10.

34. The Targeted Advertising Tax contains exclusions and thresholds that turn on the nature of the provider, the digital interface, and the provider's Illinois targeted-advertising receipts.

35. *First*, the Targeted Advertising Tax excludes targeted advertisement services based on their content, as the Targeted Advertising Tax is not imposed on "advertisement services on digital interfaces owned or operated by or operated on behalf of *a news media entity*." § 1-10

(emphasis added). A "news media entity" is defined as "an entity engaged primarily in the business of newsgathering, reporting, or publishing articles or commentary *about news, current events, culture, or other matters of public interest*." § 1-10 (emphasis added). But the definition of a "news media entity" excludes "an entity that is primarily an aggregator or re-publisher of third-party content." § 1-10.

36. *Second*, the Targeted Advertising Tax excludes persons who provide targeted advertising services whose annual cumulative gross receipts from targeted advertising services provided in Illinois during the previous 12-month period did not exceed $1,000,000. § 1-10. Put another way, the Targeted Advertising Tax regulates only larger providers of targeted advertising services, while exempting smaller providers—defined by revenue generated.

37. NetChoice's members include companies that provide targeted advertising services throughout the United States, including Illinois, and have annual cumulative gross receipts from such services provided in Illinois exceeding $1,000,000 on an annual basis. Such members do not qualify as news media entities. These members are thus subject to the Targeted Advertising Tax.

38. **Sourcing.** The Tax sources targeted advertising services to the location of the user-consumer of the targeted advertisement. § 1-15(c). A "user-consumer" is "an individual or any other person to whom targeted advertisements are conveyed." § 1-10.

39. A provider of targeted advertising services is required to determine the location of the user-consumer "using the totality of the user-consumer contact information within the provider's possession or control, including both technical information and nontechnical information included in the contract for digital advertising services." § 1-20(a).

40. "User-consumer contact information" is defined as "a user-consumer's email address, telephone number, home address, mailing address, or any credit card information necessary to engage in a sales transaction." § 1-10.

41. There is a "rebuttable presumption" that the user-consumer is located in Illinois—and thus the targeted advertising services are subject to the Targeted Advertising Tax—"if the user-consumer contact information associated with a device or account on record with or available to a provider indicates an Illinois home address, an Illinois mailing address, or an Illinois internet protocol address or other user-consumer data showing 'place of primary use' in Illinois as defined in the Mobile Telecommunications Sourcing Conformity Act." § 1-20(b).

42. **Registration.** Beginning January 1, 2027, Illinois bars persons from engaging in business as providers of targeted advertising services in the State without first obtaining a certificate of registration from the Department. § 1-25(a).

43. The Department will not issue a certificate of registration to "any person who is in default to the State of Illinois for moneys due under this Act or any other tax Act administered by the Department." § 1-25(c). Thus, providers of targeted advertising services that do not pay the Targeted Advertising Tax will be barred from engaging in business in the State.

44. The Department may revoke a provider of targeted advertising services' certificate of registration if it "violates any of the provisions of this Act or regulations promulgated pursuant to this Act." § 1-30(a).

45. **Returns**. Providers of targeted advertising services must file a return to the Department by the 20th day of each month for the preceding calendar month. The provider must pay the requisite amount of Targeted Advertising Tax with the return. § 1-35(a)-(b).

46. **Penalties**. Providers of targeted advertising services who fail to file a return or violate any other provision of the Targeted Advertising Tax are guilty of a Class 3 felony. § 1-50.

47. **Purpose of Targeted Advertising Tax**. The purported purpose of the Targeted Advertising Tax is to impose taxation on "goods and services that traditionally have been subject to Illinois State and local use and occupation taxes [but] have avoided taxation in the *digital era*." § 1-5(1) (emphasis added). In particular, Illinois targets the "barter [of] personal information for access to digital platforms" that is "in turn, . . . sold for use in targeted advertisements on digital platforms." § 1-5(1).

48. The Targeted Advertising Tax does not apply to providers of targeted advertising services with annual Illinois targeted advertising services gross receipts of $1,000,000 or less purportedly because "the consumption value provided by small networks is negligible, especially when compared to the compliance burden that would be imposed on *those digital platforms*." § 1-5(2) (emphasis added).

49. The Department will deposit all funds received from the Targeted Advertising Tax into the General Revenue Fund. § 1-45.

CLAIMS

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

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

51. 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).

52. ITFA prohibits state and local governments from imposing "discriminatory taxes on electronic commerce." ITFA § 1101(a)(2).

53. 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.

54. The Targeted Advertising Tax is discriminatory because it singles out and targets online targeted advertising services for taxation and is not generally imposed on similar offline services.

55. The Targeted Advertising 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) 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 Targeted Advertising 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* § 1-45 (depositing the Targeted Advertising Tax into the General Revenue Fund).

b. Imposed by a State. The Targeted Advertising 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). Targeted advertising services constitute "electronic commerce." *See* ITFA § 1105(3). The tax applies solely to advertising services that: (1) are programmatic; (2) are or are comparable to banner advertising, search engine advertising, and interstitial advertising; and (3) use personal information about the people to whom the ads are being served. Only Internet-based advertising transactions meet these requirements. The tax, by contrast, does not apply to non-Internet forms of advertising, such as billboards, magazines, newspapers, and other printed media.

d. Not Generally Imposed on Offline Commerce. Because the Targeted Advertising Tax is imposed exclusively on online targeted advertising 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.

56. 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.

57. On August 14, 2026, the Maryland Tax Court held that the Maryland Digital Advertising Gross Revenues Tax—the basis for Illinois' Targeted Advertising 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 Targeted Advertising Tax is closely related to the Maryland tax and similarly 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. 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 Targeted Advertising Tax singles out and targets online advertising services for taxation and is not generally imposed on similar offline services.

59. Because the Targeted Advertising 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.

60. The Targeted Advertising Tax should therefore be declared invalid under ITFA and the Supremacy Clause of the United States Constitution.

61. Unless declared invalid, preempted, and enjoined, the Targeted Advertising Tax will unlawfully deprive Plaintiff's members of their rights and will irreparably harm Plaintiff's members.

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

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

63. 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.

64. 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.

65. The Targeted Advertising Tax fails the *Complete Auto* test because it is not fairly apportioned.

66. 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.

67. *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).

68. 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).

69. If each state adopted the Targeted Advertising Tax, each state would apply the tax based on those user-consumers located in such state. § 1-15(c). As there is no guidance explaining how to prioritize potentially conflicting sourcing rules, 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 provider of targeted advertising services may owe both a 10% Illinois Targeted Advertising Tax and a 10% Indiana Targeted Advertising Tax on the gross receipts related to a user-consumer that has an Illinois mailing address and an Indiana internet protocol address.

70. The Targeted Advertising Tax violates the Commerce Clause because it is not internally consistent. The Targeted Advertising Tax provides:

a. No credit for taxes paid to other states on the same targeted advertising service activities and gross receipts; and

b. No explanation for how to prioritize potentially conflicting technical and nontechnical factors including home address, mailing address, internet protocol address, and other user-consumer data mandated for sourcing targeted advertising service gross receipts to Illinois, thereby impermissibly risking multiple taxation of the same targeted advertising services.

71. *External consistency.* The Targeted Advertising 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).

72. Targeted advertising services are subject to the Targeted Advertising Tax solely on the basis of a user-consumer's Illinois location. This sourcing provision excludes the location of any activities giving rise to the targeted advertising service. The Targeted Advertising Tax thus reaches beyond the portion of the value that is fairly attributable to the providers of targeted advertising services' economic activity within Illinois and thereby violates the requirement of external consistency.

73. The Targeted Advertising Tax should therefore be declared invalid under the Commerce Clause of the United States Constitution.

74. Unless declared invalid, preempted, and enjoined, the Targeted Advertising 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 PROHIBITION ON DISCRIMINATION AGAINST INTERSTATE COMMERCE

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

76. Beyond being unfairly apportioned, the Targeted Advertising Tax also fails the *Complete Auto* test because it discriminates against interstate commerce.

77. 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).

78. The Targeted Advertising Tax discriminates against interstate commerce because it targets for taxation:

a. Providers of targeted advertising services headquartered outside of Illinois; and

b. Interstate commerce.

79. The Targeted Advertising Tax should therefore be declared invalid under the Commerce Clause of the United States Constitution.

80. Unless declared invalid, preempted, and enjoined, the Targeted Advertising Tax will unlawfully deprive Plaintiff's members of their rights and will irreparably harm Plaintiff's members.

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

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

82. 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."

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

84. 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).

85. "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).

86. For the same reasons as in Count II, the Targeted Advertising 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).

87. Because the Targeted Advertising Tax taxes extraterritorial values, it should therefore be declared invalid under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

88. Unless declared invalid, preempted, and enjoined, the Targeted Advertising Tax will unlawfully deprive Plaintiff's members of their rights and will irreparably harm Plaintiff's members.

COUNT V
VIOLATION OF THE FIRST AMENDMENT TO THE U.S. CONSTITUTION, AS INCORPORATED THROUGH THE FOURTEENTH AMENDMENT

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

90. 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. The First Amendment's protections apply with full force to online expression. *Moody v. NetChoice, LLC*, 603 U.S. 707, 726-27 (2024) (citation omitted); *see Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997).

91. On August 14, 2026, the Maryland Tax Court held that the Maryland Digital Advertising Gross Revenues Tax violates the First Amendment. *See Peacock TV, LLC v. Comptroller of Maryland*, Dkt. No. 23-DA-OO-0654 (Md. Tax Ct. Aug. 14, 2026). This Targeted Advertising Tax likewise violates the First Amendment.

92. **The Targeted Advertising 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.

93. 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 "providers of targeted advertising services."

94. The Targeted Advertising Tax discriminates on multiple bases triggering First Amendment scrutiny:

a. among providers of advertising services that engage in targeted advertising, by discriminating between smaller and larger online advertisers through the $1,000,000 revenue threshold, § 1-10;

b. among providers of advertising services that engage in targeted advertising, by exempting particular advertisers or advertising based on content such as those on digital interfaces "operated by or operated on behalf of a news media entity," § 1-10;

c. between *online* providers of advertising services and *offline* providers of advertising services; and

d. between providers of *targeted* and *non-targeted* advertising services.

95. The Targeted Advertising Tax here is not generally applicable.

96. Accordingly, the Targeted Advertising Tax implicates the kinds of discrimination that the U.S. Supreme Court has recognized. Each would independently subject the Targeted Advertising Tax to heightened First Amendment scrutiny.

97. **The Targeted Advertising Tax triggers strict scrutiny for multiple reasons.**

98. As an initial matter, *any* "tax that burdens rights protected by the First Amendment cannot stand unless the burden is necessary to achieve an overriding governmental interest." *Minneapolis Star*, 460 U.S. at 582.

99. In addition, the Targeted Advertising Tax chooses its targets for discriminatory taxation based on content. *Ark. Writers' Project*, 481 U.S. at 229.

100. Specifically, the Targeted Advertising Tax's news-media exclusion, § 1-10, makes the tax's application turn on whether a digital interface is owned or operated by an entity defined by the content it publishes. The Targeted Advertising Tax excludes targeted advertising services on certain digital interfaces based on whether the interface is owned or operated by a "news media entity," a status defined by the type of content the entity publishes. *See Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 591 U.S. 610, 619 (2020) (controlling plurality op.) (content-based exceptions trigger strict scrutiny).

101. Regardless, "laws that single out the press, or certain elements thereof, for special treatment pose a particular danger of abuse by the State, and so are always subject to at least some degree of heightened First Amendment scrutiny." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 640-41 (1994) (cleaned up).

102. **The Targeted Advertising Tax fails strict First Amendment scrutiny.** The Targeted Advertising Tax is presumptively unconstitutional and cannot survive strict or heightened First Amendment scrutiny.

103. Illinois lacks a sufficient governmental interest in imposing the discriminatory Targeted Advertising Tax.

104. The Targeted Advertising Tax is not properly tailored to any articulated interest.

105. The Targeted Advertising Tax therefore violates the First Amendment and should be declared invalid.

106. Unless declared invalid and its collection enjoined, the Targeted Advertising 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 Targeted Advertising Tax, Public Act No. 104-0468, art. 1, §§ 1-1 *et seq.*, is unlawful;

B. declaring that the Targeted Advertising Tax, Public Act No. 104-0468, art. 1, §§ 1-1 *et seq.*, is unlawful as preempted by the Internet Tax Freedom Act, 47 U.S.C. § 151 (note);

C. declaring that the Targeted Advertising Tax, Public Act No. 104-0468, art. 1, §§ 1-1 *et seq.*, violates the Commerce Clause of the U.S. Constitution;

D. declaring that the Targeted Advertising Tax, Public Act No. 104-0468, art. 1, §§ 1-1 *et seq.*, violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;

E. declaring that the Targeted Advertising Tax, Public Act No. 104-0468, art. 1, §§ 1-1 *et seq.*, violates the First Amendment to the U.S. Constitution;

F. enjoining the Defendants from enforcing and collecting the Targeted Advertising Tax, Public Act No. 104-0468, art. 1, §§ 1-1 *et seq.*, 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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