

Institute for
Constitutional Advocacy and Protection

GEORGETOWN LAW

Hon. Kelly L. Stephens
 Clerk of the Court
 United States Court of Appeals for the Sixth Circuit
 540 Potter Stewart U.S. Courthouse
 100 E. Fifth Street
 Cincinnati, Ohio 45202-3988

September 1, 2026

Re: *Welty v. Dunaway*, Nos. 25-5738/25-5739

Dear Ms. Stephens:

Plaintiffs respectfully write to draw the Court’s attention to *NetChoice, LLC v. Skremetti*, No. 25-5660, --- F.4th ----, 2026 WL 2546423 (6th Cir. Aug. 28, 2026).

NetChoice concerned a pre-enforcement First Amendment challenge to a Tennessee law requiring social media companies to verify the ages of prospective users and to obtain parental consent for minors. *Id.* at *1, *3. This Court vacated the district court’s decision denying a motion for a preliminary injunction. *Id.* at *1. Although the Court’s analysis focused on the irreparable harm prong of the preliminary-injunction test, the Court looked to the factors governing pre-enforcement standing for “guidance.” *See id.* at *8-9.

In the context of drawing this analogy between irreparable harm and standing, the Court made several observations that support Plaintiffs’ standing here. First, the Court explained that “history of past enforcement” is “far from dispositive” of whether a plaintiff faces a credible threat of enforcement “where, as here, the statute had only been in effect for a short while prior to the district court’s preliminary-injunction decision and had only ever existed under the shadow of pre-enforcement litigation.” *Id.* at *9. That logic applies with even greater force in this case because Plaintiffs challenged the recruitment provision of Tenn. Code Ann. § 39-15-201(a)

before it went into effect, when there could not possibly have been any past enforcement.

The Court in *NetChoice* went on to hold that, on a “logical reading of the record” and based on the Tennessee Attorney General’s “somewhat evasive position,” he had not disavowed enforcement. *Id.* at *10. In reaching that conclusion, the Court relied on *Universal Life Church Monastery Storehouse v. Nabors*, 35 F.4th 1021 (6th Cir. 2022), which found that prosecutors had failed to disavow enforcement when they “took no meaningful steps—like submitting an affidavit forswearing prosecution—to mitigate plaintiffs’ fears.” *Id.* at 1035. Defendants here refused to respond to Plaintiffs’ letter asking them to forswear prosecution and declined the district court’s invitation to submit declarations about their intentions. As in *NetChoice*, the logical reading of the record is that Defendants have refused to disavow enforcement.

Respectfully submitted,

/s/ William Powell

William Powell

Counsel for Appellees

CC: All counsel of record (via CM/ECF)

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing letter complies with the word limit in Federal Rule of Appellate Procedure 28(j) because it contains 348 words.

/s/ William Powell

William Powell

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September 2026, this letter was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ William Powell
William Powell