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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FREE SPEECH COALITION, INC.;
DEEP CONNECTION TECHNOLOGIES,
INC.; CHARYN PFEUFFER; JFF PU-
BLICATIONS, LLC; ANNA LOUISE
PETERSON; LYNSEY GRISWOLD ;
PHE, INC.; AND CONVERGENCE
HOLDINGS, INC.,

Plaintiffs,

v.

AUSTIN KNUDSEN, in his offi-
cial capacity as Attorney General
of the State of Montana

Defendant.

Case No. 9:24-cv-00067-DWM

JOINT DISCOVERY PLAN

Plaintiffs Free Speech Coalition, Inc., Deep Connection Technolo-
gies, Inc., JFF Publications, LLC, PHE, Inc., Convergence Holdings, Inc.,
Charyn Pfeuffer, Anna Louise Peterson, Lynsey Griswold (“Plaintiffs”),
and Defendant Austin Knudsen, in his official capacity as Attorney Gen-
eral of the State of Montana (“Defendant”), through their respective coun-
sel, conferred to discuss the matters listed in Rule 26(f) of the Federal
Rules of Civil Procedure. With all counsel putting forth their best, good-
faith efforts, the parties were able to agree on certain discovery matters

but not others, given the parties' differing views on the proper scope and extent of discovery. The parties jointly submit the following proposals, with their differing positions noted where indicated.

I. Initial Disclosures

The parties will serve their initial disclosures at or before the Court's scheduling conference on January 23rd, 2025.

II. Subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues.

A. Subjects of Discovery

To expedite the process of securing a judgment on Plaintiffs' foundational claims—their facial First Amendment challenge to SB544 and claim that Section 230 preempts that law—without expending unnecessary judicial or litigation resources, Plaintiffs are prepared to voluntarily dismiss their due process claims and as-applied First Amendment challenge in exchange for a stipulation of non-enforcement by the Attorney General during the pendency of this case. As the Attorney General has agreed to this course of action, the parties propose a period of limited fact and expert discovery tailored to determining (i) the full scope of SB544's applications, (ii) the narrow tailoring of SB544, and (iii) the applicability

of Section 230's protections provided to Plaintiff JFF. The parties propose a roughly 120-day discovery calendar (proposed deadlines are listed below in Part C), with cross-motions for summary judgment and an expedited bench trial (if necessary) to follow after discovery.

In addition, the parties anticipate that the Supreme Court's decision in *Free Speech Coalition v. Paxton*, No. 23-1122 (U.S.) will be issued either during the proposed discovery schedule or briefing on the cross-motions for summary judgment, and that decision will likely bear decisively on the merits of Plaintiffs' First Amendment claim. With that in mind, the parties reserve the right to request supplemental briefing or other relief once the *Paxton* decision is issued.

B. Subjects of Expert Discovery

The parties anticipate that there will be a need for experts to determine whether SB544 is the least restrictive means available to vindicate the State's compelling interest in safeguarding minors from exposure to online pornography. The areas of expert discovery will likely include the viability of existing age-verification protocols, the costs and burdens of employing those protocols, the efficacy of existing protocols, the availability of alternative methods like parental control software and their

relative efficacy, and the use of a VPN and Tor browsers (or other technology) to evade age-verification protocols and parental controls. The parties expect that fact discovery will likely clarify (and possibly narrow) the specific need for expert testimony.

C. Discovery Deadlines

Event	Deadline
Joinder of Parties/Amended Pleadings	February 24, 2025
Close of Fact Discovery	March 24, 2025
Expert Disclosures	April 21, 2025
Close of Discovery	May 26, 2025
Summary Judgment Briefs	June 2, 2025
Summary Judgment Response Briefs	June 23, 2025
Summary Judgment Reply Briefs	July 3, 2025
Trial Briefs (if necessary)	TBD
One-Day Bench Trial (if necessary)	TBD

III. Issues about disclosure, discovery, or preservation of electronically stored information.

The parties are not aware of any current issues regarding the disclosure or discovery of electronically stored information. The parties agree that electronically stored information is subject to the proportionality requirements of Fed. R. Civ. P. 26(b)(2)(C), to the same extent as other information.

IV. Issues regarding claims of privilege or of protection as trial-preparation materials.

The parties are not aware of any current issues regarding claims of privilege or protection. If any such issues arise, the parties will meet and confer before bringing any such disputes to the Court.

V. Changes or limitations on discovery.

At this time, the parties do not request any changes to the limits on discovery imposed by the Federal Rules of Civil Procedure or this Court's local rules. If a party wishes to request a change in the future, the parties will meet and confer before making a request to the Court.

VI. Other orders the Court should issue.

At this time, the parties do not anticipate the need for any orders under Rule 26(c) or under Rule 16(b) and (c), other than the Court's standard orders.

DATED this 16th day of January, 2025.

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