

No. 25-12436

United States Court of Appeals for the Eleventh Circuit

NetChoice,
Plaintiffs-Appellees,

v.

Attorney General, State of Georgia,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Georgia
No. 1:25-cv-02422-AT

**Brief for Amici Curiae State of Utah and 31 Other States, the
District of Columbia, and the Arizona Legislature in Support of
Appellant and Reversal**

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Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1, the undersigned counsel certifies that in addition to the persons identified in the Certificate of Interested Persons and Corporate Disclosure Statement that Defendant-Appellant filed with the Court in his Initial Brief, the persons listed below are known to have an interest in the outcome of this case:

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Table of Contents

Certificate of Interested Persons and Corporate Disclosure Statement	i
Table of Authorities	vi
Introduction and Interest of Amici Curiae	1
Statement of the Issues	4
Summary of the Argument	4
Argument.....	6
I. States have a compelling interest in protecting youth and children from social media’s harms.....	6
II. SB351 reasonably addresses social media harms.....	12
A. The Act regulates contractual relationships with minors, not speech.	13
B. Even if SB351 affects speech, it is a content-neutral law subject at most to intermediate scrutiny.....	15
1. The Act’s regulation of sites that allow account holders to upload and view others’ posts is content neutral.	16
2. Function- or user-based exceptions are not per se content- or speaker-based distinctions.	19
III. The district court’s facial challenge analysis did not address SB351’s constitutional applications.....	23
Conclusion	28
Additional Amici Curiae.....	29
Certificate of Compliance	31
Certificate of Service	31

Table of Authorities

Federal Cases

<i>44 Liquormart, Inc. v. Rhode Island</i> , 517 U.S. 484 (1996).....	13
<i>Bellotti v. Baird</i> , 443 U.S. 622 (1979).....	24, 25
<i>Bethel Sch. Dist. No. 403 v. Fraser</i> , 478 U.S. 675 (1986).....	26
<i>Brown v. Ent. Merchs. Ass’n</i> , 564 U.S. 786 (2011).....	25
<i>C.S. v. McCrumb</i> , 135 F.4th 1056 (6th Cir. 2025)	26
<i>City of Austin, Texas v. Reagan Nat’l Advert. of Austin, LLC</i> , 596 U.S. 61 (2022).....	passim
<i>Comput. & Commc’ns Indus. Ass’n v. Uthmeier</i> , No. 4:24-cv-438-MW/MAF, 2025 WL 1570007 (N.D. Fla. June 3, 2025).....	17, 19
<i>Erznoznik v. City of Jacksonville</i> , 422 U.S. 205 (1975).....	23, 24
<i>Free Speech Coal., Inc. v. Paxton</i> , 145 S. Ct. 2291 (2025).....	25, 26
<i>Ginsberg v. New York</i> , 390 U.S. 629 (1968).....	24
<i>Johnson v. City of Opelousas</i> , 658 F.2d 1065 (5th Cir. Unit A Oct. 1981)	25, 27
<i>Mahmoud v. Taylor</i> , 145 S. Ct. 2332 (2025).....	26

Moody v. NetChoice, LLC,
603 U.S. 707 (2024)..... 23, 27

Morgan v. Swanson,
659 F.3d 359 (5th Cir. 2011)..... 26

NetChoice v. Carr,
No. 1:25-cv-2422-AT, 2025 WL 1768621
(N.D. Ga. June 26, 2025) 16

NetChoice, LLC v. Fitch,
134 F.4th 799 (5th Cir. 2025) 28

NRA v. Bondi,
133 F.4th 1108 (11th Cir. 2025) 25

Ogden v. Saunders,
25 U.S. 213 (1827)..... 13, 14

Packingham v. North Carolina,
582 U.S. 98 (2017)..... 14

Prince v. Massachusetts,
321 U.S. 158 (1944)..... 23, 24, 26, 27

Project Veritas v. Schmidt,
125 F.4th 929 (9th Cir. 2025) 28

Reed v. Town of Gilbert,
576 U.S. 155 (2015)..... 15, 17, 18

TikTok Inc. v. Garland,
145 S. Ct. 57 (2025)..... 15

Tinker v. Des Moines Sch. Dist.,
393 U.S. 503 (1969)..... 24

Turner Broad. Sys., Inc. v. FCC,
512 U.S. 622 (1994)..... 21, 22

Walker-Serrano ex rel. Walker v. Leonard,
325 F.3d 412 (3d Cir. 2003) 26

State Statutes

O.C.G.A. § 39-6-1..... 2

O.C.G.A. § 39-6-1(6)..... 16

O.C.G.A. § 39-6-1(6)(A)-(V)..... 20

Other Authorities

5Rights Foundation, *Pathways: How Digital Design Puts Children at Risk* (July 2021) 8

Emily A. Vogels, Risa Gelles-Watnick, and Navid Massarat, *Teens, Social Media and Technology 2022*, Pew Research Center (Aug. 10, 2022) 7

Greg Lukianoff and Jonathan Haidt, *The Coddling of the American Mind: How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure* (2018) 1

Helen Thai, et al., *Reducing Social Media Use Improves Appearance and Weight Esteem in Youth with Emotional Distress*, 13 *Psychology of Popular Media* 162 (2024)..... 11

Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (2005)..... 14

Hunt Allcott, et al., *The Welfare Effects of Social Media*, 110 *Am. Econ. Rev.* (2020)..... 10

Jonathan Rothwell, *Teens Spend Average of 4.8 Hours on Social Media Per Day*, Gallup (October 13, 2023)..... 7

Letter from State Attorneys General to Matthew Penarczyk and Michael O’Sullivan (March 28, 2022) 11

Letter from State Attorneys General to United States Senate Committee on Commerce, Science, and Transportation (Oct. 4, 2021) 12

Melissa G. Hunt, et al., *Follow Friends One Hour a Day: Limiting Time on Social Media and Muting Strangers Improves Well-Being*, 44 J. Soc. & Clinical Psych. 187 (2023)..... 10

Melissa G. Hunt, et al., *No More FOMO: Limiting Social Media Decreases Loneliness and Depression*, 37 J. Soc. & Clinical Psych. 751 (2018)9

Roberto Mosquera, et al., *The Economic Effects of Facebook* (Feb. 2019)..... 10

Snap Inc. Terms of Service, <https://www.snap.com/terms> (last visited September 30, 2025) 13

U.S. Surgeon Gen., *Advisory, Social Media and Youth Mental Health* (2023)..... passim

Victoria Rideout, et al., *Common Sense Census: Media Use by Tweens and Teens, 2021* 7, 8

Introduction and Interest of Amici Curiae

The first president of Facebook once described the thought process behind building social media sites:

[It] was all about: How do we consume as much of your time and conscious attention as possible? . . . [W]e need to sort of give you a little dopamine hit every once in a while, because someone liked or commented on a photo or a post And that's going to get you to contribute more content It's a social-validation feedback loop . . . exploiting a vulnerability in human psychology.

He concluded: "God only knows what it's doing to our children's brains."

Greg Lukianoff and Jonathan Haidt, *The Coddling of the American Mind: How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure* 147 (2018).

Now we know. Excessive social media use has led to an alarming spike in adverse mental health outcomes among teenagers. And it increases youth susceptibility to depression, anxiety, self-harm, and suicide.

Social media companies know all this too. Yet they laced their products with highly addictive features like push notifications, autoplay, and infinite scroll that act like nicotine in tobacco or the design features of casinos, meant to keep gamblers at the slots and

tables as long as possible. Those addictive functions have nothing to do with the underlying content and everything to do with luring and trapping minors in an endless loop, where their eyeballs are constantly drawn to social media, so the social media companies can profit from the data.

Those addictive elements work. The average teenager spends nearly five hours per day on social media. Nearly a third of thirteen- to eighteen-year-olds say they are on social media constantly. Even the most conscientious parents are losing the battle to maintain effective parental controls. For all these reasons, the former U.S. Surgeon General warned, “We must . . . urgently take action” to protect children from those harms.

Georgia, like other states, heeded this warning. It enacted S.B. 351, now codified as O.C.G.A. § 39-6-1 *et seq.* (SB351 or Act), to place safeguards around social media platforms’ ability to contract with youth and children. But the district court enjoined the Act’s enforcement. The court held SB351 is a content-based restriction on free speech and failed strict scrutiny.

Amici Curiae are the States of Utah, Alabama, Alaska, Arkansas, Colorado, Delaware, Florida, Hawai'i, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Vermont, Virginia, West Virginia, Wyoming, the District of Columbia, and the Arizona Legislature (Amici States). Amici States have a strong interest in Georgia's appeal seeking the reversal of the district court's holding that SB351 violates the First Amendment and the resulting injunction. Like Georgia, the Amici States have compelling interests in protecting children and youth from the harmful effects of excessive social media use. Amici States thus have an especially strong interest in supporting Georgia's position explaining why SB351 complies with the First Amendment. The Act is a content-neutral regulation that furthers Georgia's important interest in protecting the mental health of its children.

Statement of the Issues

Amici States address the following issues:

1. The States have a compelling interest in protecting youth and children from the harms caused by excessive social media use.
2. The district court erred in concluding that SB351 is content based and violates the First Amendment.
3. The district court failed to conduct a proper *Moody* analysis as to whether SB351 is facially unconstitutional.

Summary of the Argument

I. Georgia, and all States, have compelling interests in protecting their youth and children from the harms resulting from excessive social media use. And far too many of our youth and children use social media far too much. The social media companies have intentionally designed their products to addict kids into overuse, exploiting their vulnerabilities and human psychology. The results have been devastating. Hours of social media use each day doubles the risk of bad mental health outcomes, including anxiety and depression. Overuse has also been linked with feelings of exclusion, attention problems, and sleep problems, which in turn can create a host of other serious mental

health issues, including depression, altered neurological development, and suicidal thoughts. States not only have an important interest, but also a moral duty, to try to protect their youth and children by curbing those harms.

II. The Act’s primary definition of social media platforms applies to websites that allow users to upload content or view other users’ content. This is quintessentially content neutral. Nothing here triggers content-based strict scrutiny: the definition doesn’t target speech based on the topics discussed or ideas or messages conveyed; it can be applied without referencing any speech’s content, and there’s no argument or factual grounds suggesting Georgia adopted the law because of disagreement with any message conveyed.

The district court erred in concluding that SB351’s function- or user-based exceptions mean the Act is content based. Speaker-based regulations warrant strict scrutiny only if they are content based. And given the harms that social media companies’ functions—push notifications, infinite scroll, and autoplay—create, the companies have more than enough “special characteristics” to warrant regulation.

If any SB351 exceptions are content based, the court needs to conduct that analysis and craft an appropriate, narrowly tailored remedy addressing any problematic provisions rather than enjoining the entire Act.

III. In analyzing whether NetChoice showed SB351 was facially unconstitutional, the district court failed *Moody's* requirement to consider the Act's constitutional applications to young children. Instead, the court merely assumed the law applied the same in every situation. That alone justifies reversal.

Argument

I. States have a compelling interest in protecting youth and children from social media's harms.

Georgia, like Amici States, has a compelling interest in protecting children and youth from social media's harms. Minors spend considerable time on social media, with their use being described as "nearly universal." U.S. Surgeon Gen., Advisory, Social Media and Youth Mental Health at 4 (2023) (Surgeon Gen. Advisory).¹ Up to 95%

¹https://www.ncbi.nlm.nih.gov/books/NBK594761/pdf/Bookshelf_NBK594761.pdf.

of 13- to 17-year-olds report using social media platforms, with more than a third of them reporting “almost constant” social media use. *Id.* More than half of them say it would be “hard to give [social media] up.” Emily A. Vogels, Risa Gelles-Watnick, and Navid Massarat, *Teens, Social Media and Technology 2022*, Pew Research Center (Aug. 10, 2022)²; Surgeon Gen. Advisory at 9-10. As of 2023, the average teenager spent nearly five hours a day on social media. Jonathan Rothwell, *Teens Spend Average of 4.8 Hours on Social Media Per Day*, Gallup (October 13, 2023).³

And it’s not just teens. Social media use among children is also prevalent. Nearly 40% of eight- to twelve-year olds use social media, Surgeon Gen. Advisory at 4, and nearly 20% percent of them report using it every day. Victoria Rideout, et al., *Common Sense Census: Media Use by Tweens and Teens, 2021* at 5.⁴ Those numbers may be

²<https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022/>.

³<https://news.gallup.com/poll/512576/teens-spend-average-hours-social-media-per-day.aspx>.

⁴https://www.common sense media.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf.

lower than for adolescents, but they are still substantial considering that age thirteen is the generally required minimum age to use social media platforms. *Id.*

More troubling still, social media platforms are knowingly designed to maximize user engagement. *Id.* at 9. Features like “push notifications, autoplay, and infinite scroll” and the quantification and display of popularity (such as “likes”) are examples of features designed to maximize engagement. *Id.* Social media sites increasingly use “algorithms that leverage user data to serve content recommendations.” *Id.* These features are designed to stimulate the brain’s reward center and reduce friction in use, making it easier to keep using and harder to stop, thus inducing users to stay on the platform as long as possible. *Id.* at 9-10; 5Rights Foundation, *Pathways: How Digital Design Puts Children at Risk*, at 7, 21-47 (July 2021).⁵ Minors are particularly susceptible because they have less impulse control and are more sensitive to peer rewards. Surgeon Gen. Advisory at 5.

⁵ <https://5rightsfoundation.com/wp-content/uploads/2021/09/Pathways-how-digital-design-puts-children-at-risk.pdf>.

All this social media engagement harms mental health.

Adolescents who spend more than three hours each day on social media “face[] double the risk of experiencing poor mental health outcomes including symptoms of anxiety and depression.” *Id.* at 6. Excessive social media use has been “linked to sleep problems, attention problems, and feelings of exclusion among adolescents.” *Id.* at 10. Poor sleep, in turn, is tied to a host of other problems, including altered neurological development, depressive symptoms, and suicidal thoughts. *Id.* Problematic social media use has also been linked to ADHD symptoms. And the “social-media induced fear of missing out, or the pervasive apprehension that others might be having rewarding experiences from which one is absent, has been associated with depression, anxiety, and neuroticism.” *Id.* (internal quotation marks and citation omitted).

On the other hand, studies show limiting social media use improves mental health. Melissa G. Hunt, et al., *No More FOMO: Limiting Social Media Decreases Loneliness and Depression*, 37 *J. Soc.*

& Clinical Psych. 751, 751-58, 766-68 (2018).⁶ A randomized controlled trial in college-aged youth found limiting social media use to thirty minutes daily over three weeks led to significant improvements in loneliness and depression. *Id.*; see also Melissa G. Hunt, et al., *Follow Friends One Hour a Day: Limiting Time on Social Media and Muting Strangers Improves Well-Being*, 44 J. Soc. & Clinical Psych. 187 (2023).⁷ Other studies also show improvement in mental health outcomes when social media use is restricted. Roberto Mosquera, et al., *The Economic Effects of Facebook* (Feb. 2019).⁸ For example, a study that paid people to deactivate social media reported that reduced social media use increased general happiness. Hunt Allcott, et al., *The Welfare Effects of Social Media*, 110 Am. Econ. Rev. 638, 653-56, 672 (2020).⁹ And an

⁶https://www.researchgate.net/publication/328838624_No_More_FOMO_Limiting_Social_Media_Decreases_Loneliness_and_DepressionPDF
[No More FOMO: Limiting Social Media Decreases Loneliness and Depression.](https://www.researchgate.net/publication/328838624_No_More_FOMO_Limiting_Social_Media_Decreases_Loneliness_and_Depression)

⁷https://www.researchgate.net/publication/371242707_Follow_Friends_One_Hour_a_Day_Limiting_Time_on_Social_Media_and_Muting_Strangers_Improves_Well-Being.

⁸https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3312462.

⁹<https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20190658>.

experiment found reducing social media use to one hour a day improved youths' confidence in their appearance. Helen Thai, et al., *Reducing Social Media Use Improves Appearance and Weight Esteem in Youth with Emotional Distress*, 13 *Psychology of Popular Media* 162 (2024).¹⁰

For these reasons, many states, like Georgia, have passed their own laws designed to protect children from social media's harms. States have also pursued advocacy and enforcement actions to protect minors from harms caused by social media. For example, forty-three states, including Georgia, sent a letter to TikTok and Snapchat urging them to implement stronger parental controls on their platforms. Letter from State Attorneys General to Matthew Penarczyk and Michael O'Sullivan (March 28, 2022).¹¹ And forty-eight states, including Georgia, expressed support for the U.S. Senate's 2021 investigation into the impact Facebook and Instagram's algorithms have on minors' mental health.

¹⁰ <https://www.apa.org/pubs/journals/releases/ppm-ppm0000460.pdf>.

¹¹ <https://www.naag.org/wp-content/uploads/2022/03/NAAG-Final-Letter-Parental-Control-App.pdf>.

Letter from State Attorneys General to United States Senate Committee on Commerce, Science, and Transportation (Oct. 4, 2021).¹²

As in those cases, Georgia has an important interest in its children’s mental health and well-being. That interest extends to protecting those children under the age of sixteen from compulsive social media use by regulating the platforms that minors use because they are designed to maximize user engagement. The district court’s ruling that Georgia cannot enforce its law to protect those interests—if affirmed—will chill all States’ attempts to address the harms social media causes children and youth.

II. SB351 reasonably addresses social media harms.

The district court wrongly concluded that SB351 is a content-based restriction on free speech that is subject to, and fails to satisfy, strict scrutiny.

¹² <https://www.naag.org/wp-content/uploads/2021/10/Final-NAAG-Letter-to-Senate-Subcommittee-on-Consumer-Protection-Product-Safety-and-Data-Security.pdf>.

A. The Act regulates contractual relationships with minors, not speech.

As Georgia explains, SB351 doesn't regulate speech at all. It governs "account[s]"—contractual relationships—between social media platforms and minors. Att'y Gen. Br. at 32-38. Social media platforms require account holders to enter complex contracts that shield the platforms from liability, allow the platforms to profit from users' online activity, and guarantee the platforms access to vast amounts of users' sensitive personal data. *Id.* at 32-33; *see, e.g., Snap Inc. Terms of Service*, <https://www.snap.com/terms> (last visited September 30, 2025). That contractual transaction, not speech, is all the Act directly regulates. *See 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 499 (1996) (distinguishing between "the State's power to regulate commercial transactions" and commercial speech).

And contracts have been subject to State regulation—and even prohibition when deemed against public policy—throughout United States history. *See Ogden v. Saunders*, 25 U.S. 213, 347 (1827) (Marshall, C.J., dissenting) ("The [State's] right to regulate contracts, to prescribe rules by which they shall be evidenced, to prohibit such as may be deemed mischievous, is unquestionable, and has been

universally exercised.”). Corporations have never had a right to enter a “contract which the laws of th[e] community forbid, and the validity and effect of their contracts is what the existing laws give to them.” *Id.* at 283 (opinion of Johnson, J.). That is especially true of contracts involving children, which have been heavily regulated and proscribed for centuries. See Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* 264–71 (2005).

Because the Act directly regulates only providing minors accounts, this case differs from *Packingham v. North Carolina*, 582 U.S. 98 (2017). There, the Supreme Court applied heightened scrutiny to a law that made it a crime for a sex offender “to access” a social-media platform. *Packingham*, 582 U.S. at 101. Unlike SB351, that North Carolina law *was* a direct regulation of speech—it made it a felony for a sex offender to post or read posts on social media. SB351 does nothing of the sort. It does not directly regulate children at all, let alone what they may say or read on the internet. All the Act does is limit social media platforms’ ability to contract with minors without parental consent. Platforms may prefer requiring children to enter complex account-holder contracts as a condition of access so they can collect their data

and maximize revenue, but the Free Speech Clause does not protect that preferred business model.

B. Even if SB351 affects speech, it is a content-neutral law subject at most to intermediate scrutiny.

Even if SB351 triggers First Amendment analysis, the district court wrongly concluded the Act is content based and subject to strict scrutiny. A law may be content based in two ways. First, a regulation is facially content based when it targets speech based on the “topic discussed or idea or message expressed.” *TikTok Inc. v. Garland*, 145 S. Ct. 57, 67 (2025) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)). Second, a law may be content based if it cannot be justified without reference to the regulated speech’s content or if it was adopted by the government because of disagreement with the message conveyed by the speech. *TikTok Inc.*, 145 S. Ct. at 67. Content-neutral laws, on the other hand, are “agnostic as to content.” *City of Austin, Texas v. Reagan Nat’l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022).

SB351’s definition of social media platforms is agnostic as to content. Its application to platforms that allow account holders to upload content or view other users’ content does not single out websites because of the topic discussed or idea or message expressed. And the

district court was wrong to conclude that the Act's function-based exemptions are merely improper speaker-based regulations.

1. The Act's regulation of sites that allow account holders to upload and view others' posts is content neutral.

SB351 defines a regulated social media platform as an “an online forum that allows an account holder to create a profile, upload posts, view and listen to posts, form mutual connections, and interact publicly and privately with other account holders and users.” O.C.G.A. § 39-6-1(6). This definition is content neutral on its face. It regulates platforms based on whether they have the functional capabilities that enable account holders to upload and view user-created content. And it applies equally to any content uploaded or viewed by a social media user regardless of what the content says. *Id.*

As an initial matter, the district court recognized that this overarching definition “does not appear to reference the content of these platforms.” *NetChoice v. Carr*, No. 1:25-cv-2422-AT, 2025 WL 1768621, at *9 (N.D. Ga. June 26, 2025) (“PI Order”). That's correct. The court's acknowledgment tracks *Reagan's* clarification of *Reed*, and a sister district court's recent content-based analysis of Florida's social media

law in *Computer & Communications Industry Association v. Uthmeier*, No. 4:24-cv-438-MW/MAF, 2025 WL 1570007, at *13-14 (N.D. Fla. June 3, 2025).

Reed declared unconstitutional a law that prohibited the display of outdoor signs without a permit, but exempted ideological signs, political signs, and temporary directional signs (as well as twenty other categories), which were each subject to different rules. 576 U.S. at 159. While the law did not discriminate among viewpoints within those topical categories, the Court still held the restrictions “single[d] out specific subject matter[s]” for different treatment. *Id.* at 164, 169. And determining which subject-matter restriction applied depended entirely on reviewing the communicative content of the sign. *Id.* at 164.

Courts applying *Reed* mistakenly interpreted this holding to mean that a law was content based if it required any content review to determine whether a law applied. *Reagan*, 596 U.S. at 68. *Reagan* rejected that interpretation. The case involved a regulation that distinguished between on and off premises signs. *Id.* at 71. Although determining whether a sign was on or off premises required reviewing the sign’s content, this review did not make the regulation content

based. *Id.* Unlike *Reed*, the Supreme Court explained, the regulation did “not single out any topic or subject matter for differential treatment.” *Reagan*, 596 U.S. at 71, 73-74. The sign’s “substantive message” was irrelevant to the regulation’s application; the content mattered “only to the extent it inform[ed] the sign’s relative location.” *Id.*

The *Reagan* Court also narrowed *Reed*’s suggestion that a law is necessarily content based if it regulates speech based on its function or purpose. *Reagan*, 596 U.S. at 74. To be sure, *Reagan* confirmed that laws cannot “swap[] an obvious subject-matter distinction for a ‘function or purpose proxy’ that achieves the same result.” *Id.* But it disagreed that classifications considering function or purpose are “*always* content based.” *Id.* Only those function or purpose classifications that discriminate based on “the topic discussed or the idea or message expressed” trigger strict scrutiny. *Id.* at 73-74 (quoting *Reed*, 576 U.S. at 171).

SB351’s primary definition of social media platforms covers websites that allow account holders to upload their own and view other users’ content and is like the content-neutral regulation in *Reagan*

rather than the content-based law in *Reed*. The definition applies to all user uploaded or viewed content—regardless of the topic discussed or idea or message expressed. To the extent review of a platform’s content is necessary, it is only to discern whether the website has that function at all. The substance of the uploaded or viewed content is irrelevant. *Reagan*, 596 U.S. at 714.

For these reasons, the regulation of websites that enable user-generated content is not a proxy for subject discrimination. It does not target speech for a social—as opposed to some other—purpose. Speech uploaded or viewed might be for any purpose, whether it is looking for a job, buying or selling a bike, asking for help playing a video game, or merely interacting with friends. As the Florida federal district court correctly noted, “speech generated by users on social media platforms, can touch on any conceivable topic, message, or idea.” *Uthmeier*, 2025 WL 1570007, at *14.

2. Function- or user-based exceptions are not per se content- or speaker-based distinctions.

SB351’s definition of social media platforms goes on to exclude any websites or platforms with specified “predominant or exclusive

function[s].” O.C.G.A. § 39-6-1(6)(A)-(V). The district court found these exemptions showed that SB351 is content based. PI Order at *11. While questioning whether all the exceptions were really function or user based, the court ultimately concluded the distinction didn’t matter because it “is merely a different flavor of content-based regulation [that] distinguishes speech based on the speaker—the platform versus the user.” PI Order at *12. That seemingly per se ruling goes too far.

SB351’s exemption for websites that provide only certain features or functions is not automatically a content-based distinction. Like the Act’s provision regulating sites that allow users to upload content, function-based exclusions look only at the content-neutral structural characteristics of a site. Whether the law applies has nothing to do with the subject or message of any user-generated content or any email or direct message. Likewise, even if SB351 leaves sites like streaming services unregulated, that is also not content based. Any differing regulation of streaming services and a social media site has nothing to do with the subjects, messages, or ideas on those sites. The critical difference is their structure or functions.

These structural criteria are like the content-neutral standards in *Turner I*, where the challenged law applied based on the number of channels and how they were transmitted, not on the programming’s “content.” *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 644-45 (1994) (*Turner I*). Likewise, for SB351’s function- or feature-based exceptions, the content matters only to reveal that structure. *Reagan*, 596 U.S. at 71.

Similarly, user-based exceptions do not necessarily create an inappropriate speaker-based distinction. And speaker-based distinctions don’t automatically trigger strict scrutiny. *Turner I*, 512 U.S. at 657-58. They demand strict scrutiny only when the “speaker preference reflects a content preference.” *Id.* at 658. Likewise, strict scrutiny does not automatically apply to regulations that focus on “one medium (or a subset thereof) but not others.” *Id.* at 660. Intermediate scrutiny applies when “the differential treatment is ‘justified by some special characteristic of the particular’ medium. *Id.* at 660-61 (internal quotation marks omitted).

The district court failed to consider that special characteristics exist here. SB351’s function- or user-based exceptions do not distinguish

between social media platforms and other services based on their subject or message. They do so because social media platforms are unique. Their structure supplies users with an endless feed of peer interactive content that is linked to excessive use, poor mental health, and anxiety caused by fear of missing out. These “special characteristics” may be different than the monopolistic nature of cable cited in *Turner I*, but the legal result is the same: strict scrutiny does not apply, particularly where SB351 does not regulate what those social media services say. 512 U.S. at 659-60.

And if any SB351 exceptions were to be found to create content-based distinctions, that still wouldn’t justify enjoining the entire Act as content based—throwing the proverbial baby out with the bathwater. Deference to state lawmaking—especially addressing the plague of social media harms—requires a much more nuanced judicial remedy. Any problematic exception could be enjoined, leaving Georgia to enforce the rest of SB351. Att’y Gen. Br. at 50-51. But the district court (and NetChoice) would first have to put in the work to show which, if any, exceptions are content based. In the meantime, the district court erred in declaring that function-, feature-, or speaker-based distinctions are

all just “different flavor[s]” of content-based regulations. PI Order at *12.

III. The district court’s facial challenge analysis did not address SB351’s constitutional applications.

Georgia explains how the district court failed to conduct a proper *Moody* analysis about SB351’s alleged facial unconstitutionality. Att’y Gen. Br. at 55-58. Amici States add this additional point.

A facial challenge to a law’s constitutionality requires a plaintiff to show, and a court to find, that the law’s “constitutional applications” are “substantially outweigh[ed]” by “unconstitutional applications.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 723-24 (2024). SB351—which protects minors—has a broad sweep of constitutional applications because it can be validly enforced against a platform when it provides accounts to children of “tender years.” *Prince v. Massachusetts*, 321 U.S. 158, 169-70 (1944). The First Amendment does not strip States of the power to protect those children from platforms. They have more limited First Amendment interests than older children, and States have an even greater interest in protecting them because they are more vulnerable to the harms posed by platforms. *See Erznoznik v. City of Jacksonville*, 422 U.S. 205, 214 n.11 (1975) (stating the “age of the

minor is a significant factor” in determining the First Amendment interests at stake).

“The [Supreme] Court long has recognized that the status of minors under the law is unique in many respects.” *Bellotti v. Baird*, 443 U.S. 622, 633 (1979) (plurality op.); *Prince*, 321 U.S. at 169-70.

“[A]lthough children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children’s vulnerability.” *Bellotti*, 443 U.S. at 635. “[E]ven where there is an invasion of protected freedoms[,] the power of the [S]tate to control the conduct of children reaches beyond the scope of its authority over adults.” *Id.* at 636 (quoting *Ginsberg v. New York*, 390 U.S. 629, 638 (1968)). “It is well settled,” for example, “that a State . . . can adopt more stringent controls on communicative materials available to youths than on those available to adults” because “[t]he First Amendment rights of minors are not coextensive with those of adults.” *Erznoznik*, 422 U.S. at 212, 214 n.11 (quoting *Tinker v. Des Moines Sch. Dist.*, 393 U.S. 503, 515 (1969)). States can impose “restraints on minors which would be unconstitutional [under the First Amendment] if placed on

adults” when the restraints are “based on” the “peculiar vulnerability of children.” *Johnson v. City of Opelousas*, 658 F.2d 1065, 1073 (5th Cir. 1981) (quoting *Bellotti*, 443 U.S. at 634).

That precedent accords with history and tradition. *See Free Speech Coal., Inc. v. Paxton*, 145 S. Ct. 2291, 2303 (2025) (considering “[h]istory, tradition, and precedent” in determining the scope of children’s First Amendment rights). States have always had more power to regulate children’s activities. At the Founding, children were viewed as “lack[ing] the reason and judgment necessary to be trusted with legal rights.” *NRA v. Bondi*, 133 F.4th 1108, 1117 (11th Cir. 2025). So the Founding generation “imposed age limits on all manner of activities.” *Id.* at 1123. Children could not enlist in the military without parental consent. *Id.* at 1117. States “set age limits restricting marriage without parental consent.” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 834 (2011) (Thomas, J., dissenting). And children did not have access to the same speech as adults. Parents, for example, “controlled children’s access to information, including books,” *NRA*, 133 F.4th at 1117. The founding generation also “targeted for special regulation works

manifestly tending to the corruption of the morals of youth.” *Free Speech Coal.*, 145 S. Ct. at 2303 (citing statutes).

This longstanding “power” to regulate “children’s activities” is at its zenith for children of “tender years.” *Prince*, 321 U.S. at 168–70. The State has a greater interest in protecting those children because they are more vulnerable to “emotional excitement and psychological or physical injury.” *Id.* at 170; *see also Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683-84 (1986) (Some “speech could well be seriously damaging to” young children but not high-school students); *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2355 n.8 (2025) (similar). Young children also have narrower First Amendment interests because they “are at a stage in which learning how to develop relationships and behave in society is as or even more important than their forming particular views on controversial topics.” *Walker-Serrano ex rel. Walker v. Leonard*, 325 F.3d 412, 417 (3d Cir. 2003); *see also C.S. v. McCrumb*, 135 F.4th 1056, 1065-66 (6th Cir. 2025) (recognizing that the “immaturity” of “elementary-aged children” bears on the scope of their First Amendment interests); *Morgan v. Swanson*, 659 F.3d 359, 386-87 (5th

Cir. 2011) (en banc) (“elementary students” are still learning “the most basic social and behavioral tasks”).

But the district court appears to have assumed that the First Amendment operates the same for all children—from birth to age 16—as it does for adults. PI Order at *8 (stating “the Act raises the same First Amendment issues in each application”). So the court never considered SB351’s broad sweep of valid applications. Georgia can at the very least enforce it against covered platforms when they provide accounts to young children. That is a valid exercise of Georgia’s longstanding “power” to regulate the “activities” of children of “tender years” to protect them from “danger[.]” *Prince*, 321 U.S. at 168-70. Even if those children have a First Amendment interest in social-media accounts that expose them to harm, the State is “justif[ied]” in protecting them because of their unique “vulnerability.” *Johnson*, 658 F.2d at 1073.

Yet the district court conducted no analysis showing that the Act’s supposedly unconstitutional applications to older children substantially “outweigh” its constitutional applications to younger children. *Moody*, 603 U.S. at 723-24. It just declared that the “full range of [the Act’s]

applications are those ‘constitutionally impermissible’ ones.” PI Order at *18. That alone requires reversal and vacating the preliminary injunction. *See NetChoice, LLC v. Fitch*, 134 F.4th 799, 809 (5th Cir. 2025) (vacating a preliminary injunction that NetChoice obtained because it did not meet its burden under *Moody*); *Project Veritas v. Schmidt*, 125 F.4th 929, 961 (9th Cir. 2025) (en banc) (The plaintiff “fail[ed] to meet its burden” under *Moody* “because it ma[de] little effort to identify and weigh the . . . statute’s lawful and unlawful applications”).

Conclusion

For the reasons above, this Court should reverse.

Respectfully submitted,

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