

First Amendment Challenges to Regulation of Social Media

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Online platforms such as social media sites allow users to communicate with billions around the world. The platforms are significant forums for speech, enabling users to share their own content as well as receive and interact with others' content. Over the past decade, federal and state policymakers have expressed concerns about a variety of issues related to online platforms, including the spread of objectionable content, the platforms' ability to control or restrict the flow of speech, and potential harms to minors.

Several Members of the 119th Congress have introduced bills to regulate online platforms. In 2025, Congress enacted the TAKE IT DOWN Act, Pub. L. No. 119-12, 139 Stat. 55, requiring covered platforms to remove nonconsensual intimate images at the request of the depicted individual. States have enacted more laws specifically regulating online platforms. Many of these state laws have been challenged under the First Amendment's Free Speech Clause. The Supreme Court has recognized that adults and minors have constitutionally protected rights to share and receive speech online. *E.g.*, *Packingham v. North Carolina*, 582 U.S. 98, 104–05 (2017). In addition, the First Amendment can protect platforms' expressive editorial judgments about what speech to host and how to present it. *Moody v. NetChoice, LLC*, 603 U.S. 707, 728 (2024). If a law restricts any of these protected expressive activities, it could be subject to legal challenge under the First Amendment. First Amendment protections are not absolute. In most constitutional challenges, the government will have the opportunity to argue that its regulation is justified. To determine whether a law complies with the First Amendment, courts apply different legal standards or tests—sometimes referred to as *levels of scrutiny*—depending on the type of speech being regulated and how the law affects speech.

This report discusses how courts have applied these First Amendment principles to state laws that fall into four categories: laws that restrict minors' access to online platforms; laws that target particular content published by platforms; laws that target platform design; and laws that require platforms to disclose information. The report also discusses how courts have evaluated state laws' definitions of the covered platforms, and how that scope of coverage affects the level of constitutional scrutiny. As a general principle, if a law targets particular speech or speakers because of their ideas or message, it will be subject to strict constitutional scrutiny and presumptively unconstitutional. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Therefore, courts have said the First Amendment likely bars laws that regulate only some platforms based on the content they host, or laws that require platforms to remove certain content because of its subject matter or viewpoint. Laws regulating platform design features may be subject to a lower level of constitutional scrutiny if they are content neutral, though courts are still likely to evaluate the government's justification and the extent of the burden on protected speech. As laws compelling speech, disclosure requirements can also be subject to strict constitutional scrutiny. *National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755, 766 (2018). At the same time, the Supreme Court has recognized that commercial disclosure requirements are, by their nature, less speech-restrictive than laws banning speech on a given topic or viewpoint, because they require the regulated entity to provide *more* information instead of prohibiting that entity from speaking. *E.g.*, *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985). Accordingly, courts have upheld transparency requirements compelling factual and uncontroversial terms-of-service disclosures under a less demanding standard of scrutiny.

The jurisprudence on online platform regulation is still developing. A number of legal challenges to online platform regulation are pending as of the date of this report, and governments continue to adopt and amend their laws. Litigants ranging from state governments to platforms and their users have argued over which laws restrict expression, what levels of scrutiny a court should apply to those that do, and whether states have identified sufficient interests and proffered sufficient evidence to justify their laws. Nonetheless, this developing jurisprudence holds lessons for Congress as it considers whether and how to regulate online platforms. In addition, this litigation has highlighted questions related to federalism and Congress's ability to preempt state laws, which may also be relevant as Congress considers platform regulations.

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Contents

Foundational First Amendment Principles	2
Protected Expression	2
Laws Targeting Expression or Content	3
Facial Challenges	4
Laws Defining Scope of Coverage.....	5
Considerations for Congress	8
Laws Restricting Minors’ Access to Platforms.....	10
First Amendment Background: Age Verification and Laws Protecting Minors.....	11
Judicial Decisions Addressing Laws That Restrict Minors’ Social Media Access.....	13
Considerations for Congress	16
Laws Targeting Particular Content or Harms	17
Laws Targeting Particular Content.....	17
Laws Targeting Advertisements and Commercial Speech	20
Laws Targeting Categories of Unprotected Speech	22
Laws Targeting Particular Harms.....	23
Considerations for Congress	25
Laws Targeting Platform Design	26
Content Moderation	27
Addictive Features	28
Privacy and Related Protections.....	32
Considerations for Congress	36
Laws Requiring Disclosures.....	37
First Amendment Background: Compelled Speech and Commercial Disclosure	
Requirements	38
Laws Requiring Purely Factual and Uncontroversial Commercial Disclosures	40
Laws Requiring Other Types of Disclosures.....	42
Considerations for Congress	45
Select Additional Arguments Raised Against State Social Media Laws	46
Preemption	47
Express Preemption	47
Implied Preemption.....	48
Section 230 of the Communications Act of 1934	48
Dormant Commerce Clause	50
Considerations for Congress	51
Section 230	51
Dormant Commerce Clause.....	51

Contacts

Author Information.....	52
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In 2024, the Supreme Court observed that “[t]he questions of whether, when, and how to regulate online entities, and in particular the social-media giants, are understandably on the front-burner of many legislatures and agencies.”¹ In 2024 and 2025, Congress enacted laws addressing the foreign ownership of TikTok and other “foreign adversary controlled applications”² and requiring that certain online platforms implement a notice-and-removal process for intimate images that were published without consent.³ In the 119th Congress, the Senate has passed the Advancing Digital Support (ADS) for Mental Health Services Act, which would require certain platforms to report information about “public service advertisements” on their websites,⁴ as well as the Children and Teens’ Online Privacy Protection Act, which would govern platforms’ use and disclosure of minors’ personal information.⁵ The House has passed the Kids Internet and Digital Safety Act (KIDS) Act, a bill consolidating a variety of legislative proposals aimed at protecting minors online.⁶ Some Members continue to introduce new bills and propose additional platform regulations.⁷

State legislatures have arguably enacted an even wider variety of laws that regulate online platforms.⁸ Among other regulations, states have enacted laws that regulate who can use certain platforms,⁹ what content platforms can display,¹⁰ how platforms should be designed,¹¹ and what information platforms must disclose to users or the public.¹²

Many of these state laws have been challenged in court by parties arguing that the laws violate the First Amendment’s Free Speech Clause. As a general matter, the Supreme Court has recognized that social media platforms are important forums for users to engage in constitutionally protected speech.¹³ As challenges to state laws regulating online platforms move through the court system, a body of First Amendment case law is developing. The Supreme Court has heard two recent challenges to state regulations of online platforms—one addressing content

¹ *Moody v. NetChoice, LLC*, 603 U.S. 707, 716 (2024).

² Protecting Americans from Foreign Adversary Controlled Applications Act, Pub. L. No. 118–50, div. H, 138 Stat. 955 (2024). For an analysis of litigation about the constitutionality of the Protecting Americans from Foreign Adversary Controlled Applications Act, see CRS Legal Sidebar LSB11261, *TikTok Inc. v. Garland: Supreme Court Rejects Challenge to TikTok Divestiture Law*, by Peter J. Benson and Valerie C. Brannon (2025).

³ Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks (TAKE IT DOWN) Act, Pub. L. No. 119–12, 139 Stat. 55 (2025). For an analysis of the TAKE IT DOWN Act, see CRS Legal Sidebar LSB11314, *The TAKE IT DOWN Act: A Federal Law Prohibiting the Nonconsensual Publication of Intimate Images*, by Victoria L. Killion (2025).

⁴ S. 414, 119th Cong. (2025).

⁵ S. 836, 119th Cong. (2025).

⁶ H.R. 7757, 119th Cong. (2026); CRS Legal Sidebar LSB11465, *The House Passes the KIDS Act*, by Peter J. Benson and Chris D. Linebaugh.

⁷ E.g., Kids Off Social Media Act, S. 278, 119th Cong. (2026); Kids Off Social Media Act, H.R. 7433, 119th Cong. (2026); App Store Accountability Act, S. 1586, 119th Cong. (2025); App Store Accountability Act, H.R. 3149, 119th Cong. (2025); Algorithm Accountability Act, S. 3193, 119th Cong. (2025).

⁸ This report refers to these laws using the past tense. Litigation challenging many of the laws is pending and state legislatures have amended some of their laws in response to the evolving landscape. This report uses the past tense to indicate that it is referring to the version of the law that, as relevant in the context of the specific discussion, was in effect at the time (1) the report was published, or (2) the law was considered by a court.

⁹ See *infra* “Laws Restricting Minors’ Access to Platforms.”

¹⁰ See *infra* “Laws Targeting Particular Content or Harms.”

¹¹ See *infra* “Laws Targeting Platform Design.”

¹² See *infra* “Laws Requiring Disclosures.”

¹³ *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017). *Packingham* involved a state law restricting registered sex offenders’ ability to access websites, regulating users rather than the platforms themselves. *Id.* at 101.

moderation restrictions,¹⁴ and another addressing an age verification requirement.¹⁵ Federal and state trial and appellate courts have decided many more.

This report analyzes the growing body of judicial decisions that apply the First Amendment to laws regulating online platforms. The report is organized by considering different aspects of state laws regulating social media and then discussing how courts have applied the First Amendment to each type of regulation. The report begins with an overview of cross-cutting First Amendment concepts that are relevant to a variety of types of free speech challenges. Later sections of the report discuss more specific First Amendment jurisprudence relevant to specific types of laws regulating online platforms and contain additional background sections as needed. Turning to specific provisions in state laws, the report first considers the definitions that set the scope of those laws. It then discusses how courts have addressed challenges to four categories of state laws: laws that restrict minors' access to online platforms; laws that target particular content published by platforms; laws that target platform design; and laws that require platforms to disclose information. The report closes with an analysis of lawsuits alleging that state regulations of online platforms are preempted by federal law or violate the dormant Commerce Clause. In each section, the report explores related considerations for Congress.

Foundational First Amendment Principles

Protected Expression

The First Amendment protects both “pure speech”¹⁶ and “inherently expressive” conduct.¹⁷ While the First Amendment extends to expressive conduct such as flag-burning,¹⁸ the Supreme Court has cautioned that conduct cannot be “labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.”¹⁹ Instead, the question is whether the allegedly expressive “activity was sufficiently imbued with elements of communication.”²⁰ For instance, the Court has held that the First Amendment protects video games because they “communicate ideas—and even social messages—through many familiar literary devices (such as characters, dialogue, plot, and music) and through features distinctive to the medium (such as the player’s interaction with the virtual world).”²¹ In another case, the Court held that a website designer was engaged in speech when she created custom websites containing “modes of expression” that would “communicate ideas.”²² The Court has also said that “the creation and dissemination of information are speech,”²³ leading lower courts to conclude that computer code can be protected if it “involves the expression or communication of ideas in a way that implicates the First Amendment.”²⁴

¹⁴ *Moody v. NetChoice, LLC*, 603 U.S. 707, 717 (2024).

¹⁵ *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 465 (2025).

¹⁶ *303 Creative LLC v. Elenis*, 600 U.S. 570, 587 (2023).

¹⁷ *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 66 (2006).

¹⁸ *Texas v. Johnson*, 491 U.S. 397, 399 (1989).

¹⁹ *United States v. O’Brien*, 391 U.S. 367, 376 (1968).

²⁰ *Spence v. Washington*, 418 U.S. 405, 409 (1974).

²¹ *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 790 (2011).

²² *Elenis*, 600 U.S. at 587.

²³ *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011).

²⁴ *Def. Distributed v. Att’y Gen.*, 167 F.4th 65, 82 (3d Cir. 2026); *see also, e.g., Universal City Studios v. Corley*, 273 (continued...)

The Supreme Court has specifically recognized social media as an important forum for sharing and receiving protected speech.²⁵ Thus, if a law limits a person's ability to use social media to speak or listen to others' speech, that person might raise a First Amendment challenge to the law.²⁶ Though First Amendment rights are not absolute, both adults and children have some constitutionally protected interests in online speech.²⁷

In addition, online platforms themselves might engage in constitutionally protected expression, not only when they create their websites or write posts, but also when they choose to host or remove others' speech. In a 2024 case, *Moody v. NetChoice, LLC*, the Supreme Court considered trade groups' challenges to Florida and Texas laws regulating platforms' content moderation activity.²⁸ The Court confirmed the general principle that providing a forum for others' views can itself qualify as expressive activity in some circumstances.²⁹ Specifically, the Court held that online "platforms' choices about the views they will, and will not, convey" are expressive.³⁰ Platforms could therefore challenge laws that interfere with expressive editorial judgments—although again, any First Amendment protections are not absolute and are limited to expressive choices.³¹

Laws Targeting Expression or Content

A law can trigger First Amendment scrutiny if it targets expressive activity by restricting or compelling speech, or if the law primarily regulates non-expressive conduct but incidentally burdens speech.³² Different types of laws receive different levels of constitutional scrutiny. When evaluating a First Amendment claim, courts decide the appropriate level of scrutiny by looking to the type of speech being regulated and how the government regulation affects that speech.³³

One important inquiry in determining the appropriate level of scrutiny is whether a law is content based or content neutral. As a general principle, the Supreme Court has said the "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."³⁴ A law is considered content based if it targets speech because of its "communicative

F.3d 429, 454 (2d Cir. 2001) (examining a program's capacity "for conveying information to a human being"); *Green v. U.S. Dep't of Just.*, 54 F.4th 738, 745 (D.C. Cir. 2022) (agreeing with *Corley*).

²⁵ *Packingham v. North Carolina*, 582 U.S. 98, 104–05 (2017).

²⁶ *E.g.*, *id.* at 107 (holding a state violated the First Amendment by barring registered sex offenders from social media). *But cf.*, *e.g.*, *NetChoice, LLC v. Reyes*, 748 F. Supp. 3d 1105, 1132–33 (D. Utah 2024) (holding that individual plaintiffs did not have standing to challenge a law regulating "social media companies—not social media users").

²⁷ *See generally*, *e.g.*, CRS Report R47049, *Children and the Internet: Legal Considerations in Restricting Access to Content*, by Eric N. Holmes (2022).

²⁸ *Moody v. NetChoice, LLC*, 603 U.S. 707, 722 (2024).

²⁹ *Id.* at 728. At the same time, the Court said "ordering a party to provide a forum for someone else's views implicates the First Amendment . . . only if . . . the regulated party is engaged in its own expressive activity, which the mandated access would alter or disrupt." *Id.* The Court distinguished prior cases in which it had allowed compelled access because it "did not affect the complaining party's own expression." *Id.* at 730.

³⁰ *Id.* at 737–38.

³¹ *See id.* at 744.

³² *United States v. O'Brien*, 391 U.S. 367, 376–77 (1968); *see also*, *e.g.*, *TikTok Inc. v. Garland*, 604 U.S. 56, 67 (2025) (describing when a law triggers "First Amendment scrutiny"); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 706–07 (1986) ("[W]e have subjected such restrictions [civil and criminal sanctions] to scrutiny only where it was conduct with a significant expressive element that drew the legal remedy in the first place . . . or where a statute based on a nonexpressive activity has the inevitable effect of singling out those engaged in expressive activity . . .").

³³ CRS Report R47986, *Freedom of Speech: An Overview*, by Victoria L. Killion (2024).

³⁴ *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 790–91 (2011) (quoting *Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002)).

content’—that is, if it ‘applies to particular speech because of the topic discussed or the idea or message expressed.’”³⁵ At the same time, the Court has said that “absent a content-based purpose or justification,” a law will not be content based if it looks to the speech’s content “only in service of drawing . . . lines” that are neutral as to speech’s content.³⁶ Further, the Court has historically recognized that the government can restrict certain limited categories of so-called “unprotected” speech, including obscenity, defamation, and fraud.³⁷ In addition, and as discussed in more detail later in the report, commercial speech generally receives “a lesser protection . . . than . . . other constitutionally guaranteed expression.”³⁸

In most contexts, though, if a court concludes the government is regulating speech because of its content, the court will apply a legal standard known as *strict scrutiny*.³⁹ Under strict scrutiny, content-based laws “are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”⁴⁰ This heightened standard can be triggered not only if a law expressly targets specific content, but also if it is applied based on the content of targeted speech.⁴¹ Further, as discussed in detail in a later section of this report addressing disclosure requirements, the Supreme Court has said that a law that compels “individuals to speak a particular message” is content based and will likely trigger strict scrutiny.⁴²

A content-neutral speech regulation might be subject to a lower standard known as *intermediate scrutiny*, which requires the government to demonstrate “an important or substantial . . . interest . . . unrelated to the suppression of free expression” and to show the “restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.”⁴³ Under intermediate scrutiny, in contrast to strict scrutiny, a regulation “need not be the least speech-restrictive means of advancing the Government’s interests.”⁴⁴ Instead, the government satisfies its burden if it does not “burden substantially more speech than is necessary.”⁴⁵

Facial Challenges

Litigants may challenge a law either on its face or as applied—that is, they can choose to argue the law as a whole violates the First Amendment or can argue a law is unconstitutional as applied

³⁵ *City of Austin v. Reagan Nat’l Advert. of Aus., LLC*, 596 U.S. 61, 69 (2022) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)).

³⁶ *Id.* In that case, the Court held a city ordinance regulating “off-premises” signs—signs advertising “things that are not located on the same premises as the sign, as well as signs that direct people to offsite locations”—was not content based. *Id.* at 64. Although the ordinance “require[d] reading a billboard to determine whether” the law applied, it nonetheless did not “single out any topic or subject matter for differential treatment.” *Id.* at 71. The law treated signs “differently based solely on” location. *Id.*

³⁷ CRS In Focus IF11072, *The First Amendment: Categories of Speech*, by Victoria L. Killion (2024). For further discussion of this issue, see *infra* “Laws Targeting Categories of Unprotected Speech.”

³⁸ *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 563 (1980); *infra* “Laws Targeting Advertisements and Commercial Speech”; “First Amendment Background: Compelled Speech.”

³⁹ *Reed*, 576 U.S. at 163–64.

⁴⁰ *Id.* at 163.

⁴¹ *E.g.*, 303 *Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023); *Holder v. Humanitarian L. Project*, 561 U.S. 1, 27 (2010).

⁴² *Nat’l Inst. of Family & Life Advoc. v. Becerra*, 585 U.S. 755, 766 (2018); *infra* “Laws Requiring Disclosures.”

⁴³ *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 662 (1994) (quoting *United States v. O’Brien*, 391 U.S. 367, 377 (1968)).

⁴⁴ *Id.*

⁴⁵ *Id.* (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989)).

to specific expression.⁴⁶ Courts have set a higher standard for plaintiffs to prevail in facial challenges, given that the outcome is invalidating a law in its entirety rather than preventing the government from enforcing the law in a specific case.⁴⁷ In other constitutional contexts, facial challengers usually must show that a law is invalid in all its applications.⁴⁸ In the First Amendment context, however, the Supreme Court has recognized a special kind of facial challenge known as *overbreadth*. A party can win an overbreadth challenge by showing “a substantial number of [the law’s] applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.”⁴⁹ The overbreadth doctrine recognizes “that the very existence of some broadly written statutes may have such a deterrent effect on free expression that they should be subject to challenge even by a party whose own conduct may be unprotected.”⁵⁰

In *Moody*, the Supreme Court case considering the constitutionality of Florida and Texas laws regulating online content moderation, the Court said the trade groups’ choice to bring facial challenges came “at a cost.”⁵¹ To evaluate the claims, courts had “to assess the state laws’ scope” and explore their “full range of applications—the constitutionally impermissible and permissible both.”⁵² The Supreme Court concluded that it did not have enough information to assess the facial claims, given the “variegated and complex” nature of the online world and the “ever-growing number” of covered platforms that “might (or might not) have to change because of” the state laws’ requirements.⁵³ The Court expected that even as to a single platform, different aspects of its service might be treated differently for First Amendment purposes.⁵⁴ For instance, the Court said that Facebook’s curated News Feed might create “an expressive product,” while transmitting direct messages might not.⁵⁵ To evaluate a facial challenge to those state laws, a court would need to develop a record allowing it to evaluate how much of the law regulated expressive activity, relative to unprotected activity, and how the law affected that protected expression.⁵⁶

Laws Defining Scope of Coverage

Some First Amendment challenges raise foundational issues that could jeopardize laws in their entirety. In particular, some plaintiffs have argued that state laws regulating online platforms are facially invalid because the definitions that determine the laws’ scope are content based: specifically, the plaintiffs allege the laws target certain platforms based on the content of their speech.⁵⁷ Stated another way, these plaintiffs argue that regardless of whether the law’s

⁴⁶ Killion, CRS Report R47986, *Freedom of Speech: An Overview*, *supra* note 33.

⁴⁷ See, e.g., *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008).

⁴⁸ *Id.* at 449.

⁴⁹ *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (alteration in original) (quoting *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021)).

⁵⁰ *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 798 (1984).

⁵¹ *Moody*, 603 U.S. at 723.

⁵² *Id.* at 724, 726.

⁵³ *Id.* at 725–26.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 726.

⁵⁷ E.g., *NetChoice v. Jones*, 822 F. Supp. 3d 656, 672–73 (E.D. Va. 2026), *appeal docketed*, No. 26-1252 (4th Cir. Mar. 6, 2026). In other cases, courts have considered these legal claims regarding coverage definitions in an as-applied context, rendering it unnecessary to consider the facial challenge. E.g., *NetChoice v. Murrill*, 812 F. Supp. 3d 594, 657 (M.D. La. 2025). Considering a different type of challenge to the law’s coverage definitions, two federal appeals courts rejected claims that definitions targeting the largest platforms based on their size triggered heightened constitutional (continued...)

requirements are themselves content based, the definitions alone render the entire law content based and require courts to apply strict scrutiny.⁵⁸

Existing case law is not clear on whether a definition is content based solely because it targets social media sites. Thus far, the appeals courts to consider the issue have reached different conclusions than some trial courts, although at least one of the different outcomes may be due to differences in the challenged state laws.

A few trial courts have said that when a law targets platforms because they host social interactions, that renders the law content based and triggers strict scrutiny.⁵⁹ One trial court said a Utah law's coverage definition was content based because it had the effect of "divid[ing] the universe of internet platforms into social media services, defined as websites or applications that 'allow users to interact socially with each other,' and other internet platforms, such as platforms for 'news, sports, commerce, [and] online video games.'"⁶⁰ Another trial court said a Virginia law that excluded sites hosting "content preselected by the provider" favored "provider-selected speech over user-generated speech" and reflected a content preference in that way.⁶¹

Two federal appeals courts have reached different conclusions. In 2025, the Eleventh Circuit⁶² concluded a trade group was unlikely to show that a Florida law targeted sites based on their content.⁶³ The Florida law defined *social media platform* similarly to the Utah law that a trial court concluded was content based.⁶⁴ The Eleventh Circuit, however, held the Florida law was content neutral and subject to intermediate scrutiny: "[n]either its definition of 'social media platform' nor of 'addictive features' makes any reference to the type of content involved."⁶⁵ Instead, the court said the law "defines social media platforms by reference to a *form* of expression, not a *subject matter*."⁶⁶

scrutiny. *Netchoice, L.L.C. v. Paxton*, 49 F.4th 439, 482 (5th Cir. 2022), *vacated and remanded sub nom.*, *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024); *NetChoice, LLC v. Att'y Gen.*, 34 F.4th 1196, 1224–26 (11th Cir. 2022) *vacated and remanded sub nom.*, *Moody*, 603 U.S. at 707. Both opinions were vacated on other grounds by the Supreme Court. *Moody*, 603 U.S. at 717.

⁵⁸ *E.g.*, *Jones*, 822 F. Supp. 3d at 671; *Murrill*, 812 F. Supp. 3d at 644–45. This section of the report discusses court decisions addressing whether the definitions triggered strict scrutiny; later sections discuss how courts ultimately applied the relevant constitutional standard to the laws at issue.

⁵⁹ *Murrill*, 812 F. Supp. 3d at 645; *NetChoice, LLC v. Yost*, 778 F. Supp. 3d 923, 953 (S.D. Ohio 2025), *rev'd and remanded on other grounds*, 180 F.4th 268 (6th Cir. 2026); *NetChoice, LLC v. Reyes*, 748 F. Supp. 3d 1105, 1122 (D. Utah 2024). The Ohio opinion was reversed on appeal, but two of the appeals court judges agreed with the trial court's conclusion that the coverage definition made the law content based and triggered strict scrutiny. *Yost*, 180 F.4th at 288 (concluding the definition is content based both because it "disfavors subject matter that appeals to Children" and because it "favors news and current events subject matter"); *id.* at 320 (Ritz, J., dissenting) (agreeing with this aspect of the lead opinion).

⁶⁰ *Reyes*, 748 F. Supp. 3d at 1122 (quoting *NetChoice, LLC v. Fitch*, 738 F. Supp. 3d 753, 771 (S.D. Miss. 2024)). This Utah law contained exemptions for certain services such as email or cloud storage but did not expressly exempt platforms hosting news or other content. *Id.* at 1113–14.

⁶¹ *Jones*, 822 F. Supp. 3d at 673.

⁶² For simplicity, references in this report to a particular circuit (e.g., the Eleventh Circuit) refer to the U.S. Court of Appeals for that circuit (e.g., the U.S. Court of Appeals for the Eleventh Circuit).

⁶³ *Comput. & Commc'ns Indus. Ass'n v. Uthmeier*, No. 25-11881, 2025 WL 3458571, at *4 (11th Cir. Nov. 25, 2025).

⁶⁴ *Compare* FLA. STAT. § 501.1736(1)(e) (2025) (defining a platform with certain criteria, including allowing users to upload or view others' content, using algorithms to deliver content, and using certain "addictive features"), *with* UTAH CODE ANN. § 13-71-101(14)(a) (West 2025) (defining a platform with certain criteria, including displaying content that is primarily generated by users, connecting account holders to allow users to interact socially, and making available lists of connected account holders).

⁶⁵ *Comput. & Commc'ns Indus. Ass'n*, 2025 WL 3458571, at *4 (quoting FLA. STAT. § 501.1736(1)(e)).

⁶⁶ *Id.*

In another 2025 ruling, the Ninth Circuit partially rejected a preliminary constitutional challenge to California’s Protecting Our Kids from Social Media Addiction Act.⁶⁷ That law defined *covered sites* as “including, but not limited to, a social media platform’ that personalizes feeds based on information provided by the user.”⁶⁸ A trade group argued the law as a whole was content based because it targeted websites based on whether they facilitated social interaction.⁶⁹ The appeals court disagreed with this characterization of the law, emphasizing that the law’s coverage definition was not limited to social media platforms.⁷⁰ Instead, the Ninth Circuit concluded that the law applied “to websites whether they facilitate social interaction or other forms of content” and was “content neutral.”⁷¹ Thus, this definition could be distinguished from the cases above based on the fact that it did not apply *only* to social media platforms.

It is uncertain whether courts will consider a law content based if it targets sites solely because they host social interactions. However, a number of trial courts have concluded that strict scrutiny applies when a definition expressly exempts certain sites from coverage based on the type of content they carry.⁷² As an example, a Virginia law required social media platforms to limit minors’ time on their sites, absent parental consent.⁷³ The law defined *social media platform*, in relevant part, as a service that “connects users . . . to interact socially with each other” and allows users to do things like construct a public profile and post content viewable by other users.⁷⁴ The law specifically exempted any service “that consists primarily of news, sports, entertainment, ecommerce, or content preselected by the provider and not generated by users.”⁷⁵ In a First Amendment challenge, the trial court held that the law drew “distinctions between areas of protected speech” and was therefore content based, triggering strict scrutiny.⁷⁶ Specifically, the law’s exemptions for “news, sports, entertainment, ecommerce, or interactive gaming content” exempted “certain subject matter categories.”⁷⁷ Other trial courts have similarly said that statutory exemptions for sites carrying certain types of content trigger strict scrutiny.⁷⁸

Some state laws apply only to platforms that target children or are likely to be accessed by children.⁷⁹ The Sixth Circuit concluded one such Ohio law was subject to strict scrutiny because the coverage definition required consideration of “factors that are undeniably content-focused to determine whether an Operator’s site ‘is reasonably anticipated to be accessed by children,’”

⁶⁷ NetChoice, LLC v. Bonta, 152 F.4th 1002, 1009 (9th Cir. 2025).

⁶⁸ *Id.* at 1016 (quoting CAL. HEALTH & SAFETY CODE § 27000.5(b)(1) (West 2026)).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See NetChoice v. Murrill, 812 F. Supp. 3d 594, 609 (M.D. La. 2025) (compiling citations for eight trial courts granting preliminary injunctions). One of those cited rulings was not based on the coverage definition. Comput. & Commc’ns Indus. Ass’n v. Uthmeier, 826 F. Supp. 3d 1358, 1379–83 (N.D. Fla. 2025), *stayed pending appeal*, No. 25-11881, 2025 WL 3458571 (11th Cir. Nov. 25, 2025).

⁷³ NetChoice v. Jones, 822 F. Supp. 3d 656, 664 (E.D. Va. 2026), *appeal docketed*, No. 26-1252 (4th Cir. Mar. 6, 2026).

⁷⁴ *Id.* at 665.

⁷⁵ *Id.* at 665–66.

⁷⁶ *Id.* at 673.

⁷⁷ *Id.*

⁷⁸ E.g., NetChoice v. Hilgers, No. 4:26-CV-003149, 2026 WL 1850018, at *7–8 (D. Neb. June 27, 2026); NetChoice v. Carr, 789 F. Supp. 3d 1200, 1220–21 (N.D. Ga. 2025), *appeal docketed*, No. 25-12436 (11th Cir. July 16, 2025); NetChoice, LLC v. Griffin, No. 5:23-CV-005105, 2025 WL 978607, at *9–10 (W.D. Ark. Mar. 31, 2025), *appeal docketed*, No. 25-1889 (8th Cir. May 2, 2025).

⁷⁹ See, e.g., NetChoice, LLC v. Bonta (*Bonta II*), 170 F.4th 744, 755 (9th Cir. 2026).

including the site’s content.⁸⁰ In the court’s view, then, the law “disfavors subject matter that appeals to Children.”⁸¹ In some contrast, the Ninth Circuit said that a California law targeting services likely to be accessed by children might be content based in some applications but not others.⁸² Certain aspects of the law could require platforms “to review the content that they publish to determine whether it is directed at or otherwise appealing to children,” but other aspects of the definition could mean the law applies regardless of the platform’s content.⁸³ In the context of a facial overbreadth challenge, the Ninth Circuit said it did yet not have sufficient information to conclude that the law’s applications to protected expression substantially outweighed its other applications.⁸⁴

Considerations for Congress

The developing First Amendment jurisprudence on the scope of laws regulating online platforms can guide Congress if it drafts a law containing a definition of online platforms. Various federal proposals have used different definitions that target different entities.⁸⁵ A federal law enacted in 2023 defines *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 such an account or profile;

(B) enables 1 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.⁸⁶

Bills introduced in the 119th Congress contain different definitions of covered platforms that also focus on whether the sites serve as a forum for user-generated content.⁸⁷

In general, Supreme Court cases suggest that a law targeting only certain speakers can trigger heightened constitutional review if the differential treatment “threatens to suppress the expression of particular ideas or viewpoints.”⁸⁸ A law that targets speech based on its content is

⁸⁰ *NetChoice, LLC v. Yost*, 180 F.4th 268, 288 (6th Cir. 2025) (quoting OHIO REV. CODE ANN. § 1349.09(C) (West 2026)); *id.* at 319–20 (Ritz, J., dissenting) (agreeing with this aspect of the lead opinion).

⁸¹ *Id.* at 288 (opinion of Clay, J.).

⁸² *Bonta II*, 170 F.4th at 756–57.

⁸³ *Id.* at 757.

⁸⁴ *Id.* at 758.

⁸⁵ See, e.g., CRS Report R47662, *Defining and Regulating Online Platforms*, coordinated by Clare Y. Cho (2023).

⁸⁶ 42 U.S.C. § 1862w(a)(2).

⁸⁷ See, e.g., KIDS Act, H.R. 7757, 119th Cong. § 201 (2026) (including as elements of the definition that a platform “uses a design feature to promote user engagement on the platform” and “uses the personal information of the user to advertise, market, or make content recommendations”); Kids Off Social Media Act, S. 278, 119th Cong. § 102(6)(B) (as reported, June 30, 2025) (excluding certain platforms from the definition, including platforms that have the primary function of providing or facilitating “crowd-sourced reference guides,” “content that consists primarily of news, sports, sports coverage, entertainment, or other information or content that is not user-generated but is preselected by the platform,” or “business, product, or travel information”).

⁸⁸ *Leathers v. Medlock*, 499 U.S. 439, 447 (1991); see generally Libr. of Cong., *Laws Making Speaker-Based Distinctions in Regulating Speech*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt1-7-3-5/ALDE_00013699/ (last visited Aug. 24, 2026) (discussing when speaker-based distinctions trigger heightened scrutiny).

presumptively unconstitutional,⁸⁹ and as discussed, lower courts have disagreed about when definitions of online platforms are content based and render the law subject to strict scrutiny.⁹⁰ Viewing the existing precedent as a whole, courts have been more likely to rule that a law is content based if a definition applies to certain platforms based on the content they carry—such as when a law expressly exempts sites because they carry news, sports, or entertainment content.⁹¹ Laws targeting sites that appeal to children may also be content based if the definition is based on the content those sites carry.⁹² It is less clear whether courts will find a law content based solely because it targets platforms that host social interactions.⁹³

Congress might consider articulating content-neutral justifications for regulating certain platforms. For instance, the Supreme Court said in one case that heightened constitutional scrutiny is “unwarranted” when regulation is “‘justified by some special characteristic of’ the particular medium being regulated.”⁹⁴ In that case, the Court applied intermediate scrutiny to the FCC’s “must carry” provisions that required cable systems to carry local broadcast television stations.⁹⁵ The Court concluded that the provisions were justified by the bottleneck monopoly power cable operators exercised over the physical infrastructure making television available, and emphasized that the regulations applied “to almost all cable systems in the country, rather than just a select few.”⁹⁶ Thus, the provisions did not raise a heightened danger of “suppression” of speech.⁹⁷ In another case, the Supreme Court said that a federal law singling out TikTok was facially content neutral because it applied based on “a foreign adversary’s control over the platform,” rather than any content on the platform.⁹⁸ In the Court’s view, TikTok presented “special characteristics,” and the law was “not ‘a subtle means of exercising a content preference.’”⁹⁹ Congress might consider whether any law regulating online platforms could similarly define its coverage by reference to technological or other content-neutral characteristics of the regulated medium.

For a discussion of policy considerations related to defining covered entities, see CRS Report R47662, *Defining and Regulating Online Platforms*, coordinated by Clare Y. Cho (2023).

⁸⁹ *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

⁹⁰ *Supra* “Laws Defining Scope of Coverage.”

⁹¹ See cases cited *supra* notes 72 and 78.

⁹² See, e.g., *Bonta II*, 170 F.4th 744, 757 (9th Cir. 2026).

⁹³ Compare *supra* note 59, with *NetChoice, LLC v. Bonta*, 152 F.4th 1002, 1016 (9th Cir. 2025), and *Comput. & Commc’ns Indus. Ass’n v. Uthmeier*, No. 25-11881, 2025 WL 3458571, at *4 (11th Cir. Nov. 25, 2025).

⁹⁴ *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 660–61 (1994) (quoting *Minneapolis Star & Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575, 585 (1983)).

⁹⁵ *Id.* at 662.

⁹⁶ *Id.* at 661.

⁹⁷ *Id.*

⁹⁸ *TikTok Inc. v. Garland*, 604 U.S. 56, 71 (2025). The challengers also argued the law was content based because it could in the future extend to other companies, but excluded companies with the primary purpose of allowing users to post product, business, or travel reviews. *Id.* The Supreme Court did not weigh in on that argument. *Id.* at 71–72.

⁹⁹ *Id.* at 72 (quoting *Turner Broad. Sys., Inc.*, 512 U.S. at 645). The challengers also claimed the government asserted an additional, content-based rationale for the law; the Supreme Court believed the content-neutral rationale alone was sufficient to justify the law, and therefore this second rationale did not trigger strict scrutiny. *Id.* at 78–79.

Laws Restricting Minors' Access to Platforms

Some states have enacted laws that require certain online platforms to limit when or how children or teens (i.e., minors¹⁰⁰) access the platforms. Many of these states—including Ohio,¹⁰¹ Georgia,¹⁰² Tennessee,¹⁰³ and Louisiana¹⁰⁴—prohibit covered platforms from creating an account for a minor without first obtaining parental consent. Virginia requires that covered platforms limit minors' use of a platform to “one hour per day, per service or application” unless a parent changes the time limit.¹⁰⁵ Other states do not require limits on minors' access to platforms themselves but do require that platforms prohibit minors from using certain functions without parental consent.¹⁰⁶ For example, Utah requires covered platforms to set default privacy settings for minors' accounts that restrict the accounts' visibility and restrict the account holders' ability to share content and send direct messages to other accounts.¹⁰⁷

Because these laws require platforms to treat minor users differently than adult users, platforms may need to adopt age verification measures to determine whether a particular user is a minor.¹⁰⁸ Some state laws expressly require age verification in certain circumstances.¹⁰⁹ New York, for example, prohibits covered platforms from providing “an addictive feed” to a user, unless a platform has verified that the user is not a covered minor or has obtained parental consent.¹¹⁰

Online platforms have argued that many of these laws violate the First Amendment. Separate from the definition-based challenges discussed above,¹¹¹ platforms have contended that access restrictions burden their ability to communicate with users and burden users' own speech.¹¹²

¹⁰⁰ States define *minor* differently in laws restricting access to online platforms, but the term generally refers to individuals under the age of eighteen. Compare CAL. HEALTH & SAFETY CODE § 27000.5(d) (West 2026) (defining *minor* as “an individual under 18 years of age who is located in the State of California”), with LA. STAT. ANN. § 51:1751 (2026) (defining *minor* as “an individual under circumstances where a social media company reasonably believes or has actual knowledge that the individual is under the age of sixteen and is not emancipated or married”).

¹⁰¹ OHIO REV. CODE ANN. § 1349.09 (West 2026).

¹⁰² GA. CODE ANN. §§ 39-6-1 to 39-6-5 (West 2026).

¹⁰³ TENN. CODE ANN. §§ 47-18-5701 to 47-18-5706 (West 2026).

¹⁰⁴ LA. STAT. ANN. §§ 51:1751–1759 (2026).

¹⁰⁵ VA. CODE ANN. § 59.1-577.1 (2026).

¹⁰⁶ See, e.g., UTAH CODE ANN. §§ 13-71-101 to 13-71-401 (West 2026); CAL. HEALTH & SAFETY CODE §§ 27000–27007 (West 2026).

¹⁰⁷ UTAH CODE ANN. § 13-71-202 (West 2026).

¹⁰⁸ See, e.g., UTAH CODE ANN. § 13-71-201 (West 2026); GA. CODE ANN. § 39-6-2(a) (West 2026); VA. CODE ANN. § 59.1-577.1(B) (2026). For more information about age verification measures, see CRS Report R47884, *Identifying Minors Online*, by Clare Y. Cho (2025), and CRS Legal Sidebar LSB11354, *Supreme Court Upholds State Age-Verification Requirement for Certain Websites*, by Victoria L. Killion (2025).

¹⁰⁹ N.Y. GEN. BUS. LAW § 1501 (McKinney 2026); N.Y. COMP. R. & REGS. tit. 13, pt. 700 (2026).

¹¹⁰ N.Y. GEN. BUS. LAW § 1501 (McKinney 2026); N.Y. COMP. R. & REGS. tit. 13, pt. 700.4–700.5 (2026) (describing requirements related to age verification). The New York law defines *addictive feed* based on how a platform recommends, selects, or prioritizes media to display. N.Y. GEN. BUS. LAW § 1500(1) (McKinney 2026).

¹¹¹ See *supra* “Laws Defining Scope of Coverage.”

¹¹² E.g., *NetChoice, LLC v. Jones*, 822 F. Supp. 3d 656, 667–69 (E.D. Va. 2026), *appeal docketed*, No. 26-1252 (4th Cir. Mar. 6, 2026); *NetChoice, LLC v. Carr*, 789 F. Supp. 3d 1200, 1214–16 (N.D. Ga. 2025), *appeal docketed*, No. 25-12436 (11th Cir. July 16, 2025).

First Amendment Background: Age Verification and Laws Protecting Minors

The Supreme Court has addressed laws restricting minors' access to speech in several contexts. In 1968, the Court affirmed a New York state conviction for selling magazines depicting nudity to a minor.¹¹³ In the case, the Court held that a state may prohibit minors from accessing material the legislature rationally deemed obscene as to those minors.¹¹⁴ Obscenity falls into one of the few "narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem."¹¹⁵

Outside this limited context of unprotected speech, though, "minors are entitled to a significant measure of First Amendment protection," and governments may "bar public dissemination of protected materials to them" only in narrow circumstances.¹¹⁶ In a number of cases, the Supreme Court has applied strict scrutiny to laws that restrict minors' access to protected speech, particularly when those laws regulate protected speech based on its content, as discussed above.¹¹⁷ Strict scrutiny requires the government to show the law is the least restrictive means to achieve a compelling interest.¹¹⁸ The Supreme Court, for example, applied strict scrutiny to a California law that prohibited selling or renting violent video games to minors,¹¹⁹ and to a federal law that required cable operators to limit certain non-obscene sexually-oriented programming "to hours when children are unlikely to be viewing" the programs.¹²⁰ In the latter case, the Court said that "even where speech is indecent and enters the home" without parental consent, "the objective of shielding children does not suffice to support a blanket ban if the protection can be accomplished by a less restrictive alternative."¹²¹

Looking at laws that specifically govern minors' access to information *online*, the Court has applied strict scrutiny to invalidate some—but not all—such laws based on the burden they impose on adults' speech.¹²² In 1997, the Court invalidated two provisions of the Communications Decency Act (CDA) that prohibited the knowing transmission of indecent messages to minors and the knowing display of "patently offensive messages in a manner that is available" to minors.¹²³ These prohibitions, the Court held, were content-based regulations that—even though intended to protect children—burdened adults' protected speech.¹²⁴ Although the CDA provided a defense for persons who employed certain age verification measures, the Court

¹¹³ *Ginsberg v. New York*, 390 U.S. 629, 636–43 (1968).

¹¹⁴ *Id.*

¹¹⁵ *United States v. Stevens*, 559 U.S. 460, 469 (2010) (quoting *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571–72, (1942)); see also "Obscenity" in Killion, CRS In Focus IF11072, *The First Amendment: Categories of Speech*, *supra* note 37; *infra* "Laws Targeting Categories of Unprotected Speech."

¹¹⁶ *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212–13 (1975) (citing *Tinker v. Des Moines Sch. Dist.*, 393 U.S. 503 (1969)).

¹¹⁷ *Supra* "Laws Targeting Expression or Content."

¹¹⁸ *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

¹¹⁹ *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 799 (2011).

¹²⁰ *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 806, 813 (2000).

¹²¹ *Id.* at 814.

¹²² The Court held that there is "no basis for qualifying the level of First Amendment scrutiny that should be applied to" expression on the internet. *Reno v. ACLU*, 521 U.S. 844, 870 (1997).

¹²³ *Id.* at 859.

¹²⁴ *Id.* at 874. The Court emphasized that the law "effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another." *Id.*

determined that the defense did not significantly narrow the law's burden on speech.¹²⁵ Pointing to the trial court's findings in the case, the Supreme Court concluded that the age verification measures at issue were both infeasible for some speakers and ineffective.¹²⁶

Congress responded to the CDA's invalidation by enacting the Child Online Protection Act (COPA), which prohibited the "the knowing posting, for 'commercial purposes,' of World Wide Web content that is 'harmful to minors.'"¹²⁷ Like the CDA, COPA included an affirmative defense for persons who used specified age verification measures.¹²⁸ When COPA was challenged on First Amendment grounds, the Supreme Court again applied strict scrutiny, saying this was "a content-based speech restriction."¹²⁹ The Court concluded that, based on the record before it, voluntary blocking and filtering software appeared to be a less speech-restrictive alternative to age verification.¹³⁰ As part of its analysis, the Court discussed the burden on adults' ability to "gain access to speech they have a right to see."¹³¹

In 2025, however, the Supreme Court applied intermediate scrutiny and upheld a Texas law that required age verification to be used by certain commercial websites that distribute "sexual material harmful to minors."¹³² Based on Texas's definition of *sexual material harmful to minors*, the Court held that the law "regulates only speech that is obscene to minors," and said that category of speech "is unprotected to the extent the State seeks only to verify age."¹³³ In addition, unlike the CDA and COPA, which incorporated age verification as a defense, the Texas law provided that "the lack of age verification" is "an element that the State must plead and prove" to establish a violation.¹³⁴ These features, in the Court's view, distinguished Texas's law from the CDA and COPA, which the Court said effectively banned adults' access to a subset of protected speech.¹³⁵ By comparison, the Court reasoned, the "incidental burden" of age verification on adults' speech warranted applying intermediate scrutiny, rather than strict scrutiny, to Texas's law.¹³⁶ The Court held that the law was sufficiently tailored to meet that standard because it employed "established methods" of age verification used for "other age-restricted services."¹³⁷

¹²⁵ *Id.* at 881–82.

¹²⁶ *Id.*

¹²⁷ *Ashcroft v. ACLU*, 542 U.S. 656, 661 (2004) (quoting 47 U.S.C. § 231(a)(1)).

¹²⁸ *Id.* at 662.

¹²⁹ *Id.* at 666.

¹³⁰ *Id.* at 667–69.

¹³¹ *Id.* at 667.

¹³² *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 467, 477 (2025) (quoting TEX. CIV. PRAC. & REM. CODE ANN. § 129B.002(a)).

¹³³ *Id.* at 482.

¹³⁴ *Id.* at 489.

¹³⁵ *Id.* at 486–91.

¹³⁶ *Id.* at 495.

¹³⁷ *Id.* at 497. For more information, see Killion, CRS Legal Sidebar LSB11354, *Supreme Court Upholds State Age-Verification Requirement for Certain Websites*, *supra* note 108.

Judicial Decisions Addressing Laws That Restrict Minors' Social Media Access

Online platforms have challenged numerous state laws that restrict minors' access to the platforms. In most of these cases, federal trial courts have concluded that the challengers' First Amendment claims succeed or are likely to succeed.¹³⁸

These trial courts have held that restricting access to social media restricts constitutionally protected expression,¹³⁹ though the courts have varied in their conclusions as to whose expression is restricted. Some courts have held that restricting access to online platforms limits platforms' rights to publish expression¹⁴⁰—the First Amendment right at issue in *Moody v. NetChoice, LLC*.¹⁴¹ In other cases, trial courts have held that access restrictions affect adult or minor users' rights to express themselves on platforms.¹⁴² Some courts have held that both types of First Amendment rights are at issue.¹⁴³

In drawing these conclusions, courts have rejected states' arguments that platform access restrictions regulate only non-expressive conduct.¹⁴⁴ Arkansas, for example, argued that “a platform’s decision to allow minors on its platform” is not expressive.¹⁴⁵ A federal trial court hearing a challenge to Arkansas’s law disagreed, concluding that restricting access to online platforms “ultimately impacts users’ speech.”¹⁴⁶

Because restricting access to online platforms limits expression, courts have evaluated which level of First Amendment scrutiny to apply to state laws that limit minors' access.¹⁴⁷ Most federal trial courts hearing challenges to such laws have concluded that the laws are content based such

¹³⁸ See *NetChoice, LLC v. Jones*, 822 F. Supp. 3d 656, 664 (E.D. Va. 2026), *appeal docketed*, No. 26-1252 (4th Cir. Mar. 6, 2026); *NetChoice v. Hilgers*, No. 4:26-CV-3149, 2026 WL 1850018, at *11 (D. Neb. June 27, 2026); *NetChoice v. Murrill*, 812 F. Supp. 3d 594, 664 (M.D. La. 2025); *NetChoice, LLC v. Griffin*, No. 5:23-CV-5105, 2025 WL 978607, at *14 (W.D. Ark. Mar. 31, 2025), *appeal docketed*, No. 25-1889 (8th Cir. May 2, 2025); *NetChoice, LLC v. Carr*, 789 F. Supp. 3d 1200, 1210 (N.D. Ga. 2025), *appeal docketed*, No. 25-12436 (11th Cir. July 16, 2025); *NetChoice, LLC v. Fitch*, 787 F. Supp. 3d 262, 281 (S.D. Miss. 2025); see also *NetChoice, LLC v. Yost*, 778 F. Supp. 3d 923, 957 (S.D. Ohio 2025), *rev'd and remanded*, 180 F.4th 268 (6th Cir. 2026). Some courts have addressed challenges to laws that restrict minors' access to social media platforms without deciding whether the challenges are likely to succeed on the merits. See, e.g., *NetChoice v. Skrmetti*, No. 3:24-CV-01191, 2025 WL 1710228, at *14 (M.D. Tenn. June 18, 2025) (denying a motion to preliminarily enjoin a Tennessee law because the challenger did not show that it would suffer irreparable injury absent the injunction).

¹³⁹ E.g., *Jones*, 822 F. Supp. 3d at 667; *Griffin*, 2025 WL 978607, at *8; *Carr*, 789 F. Supp. 3d at 1214.

¹⁴⁰ *Jones*, 822 F. Supp. 3d at 667 (“[NetChoice’s] members’ First Amendment rights are implicated as they are engaging in expressive activity when they disseminate third-party speech.”).

¹⁴¹ *Moody v. NetChoice, LLC*, 603 U.S. 707, 740 (2024); see *supra* “Foundational First Amendment Principles.”

¹⁴² *Griffin*, 2025 WL 978607, at *8 (“Act 689 forecloses access to social media for those minors whose parents do not consent to the minor’s use of social media. It also burdens social media access for all Arkansans—both adults and minors whose parents would allow them to use social media. . . . [T]he Court agrees that the age-verification requirement will deter adults from speaking or receiving protected speech on social media.”).

¹⁴³ *Carr*, 789 F. Supp. 3d at 1214 (“[T]he Act threatens social media platforms’ ability to communicate with young audiences and burdens their ability to communicate with adults. Those burdens constitute First Amendment injuries.”); *id.* at 1227 (describing “significant burdens on the First Amendment rights of social media platforms, young people, and all users”).

¹⁴⁴ E.g., *NetChoice, LLC v. Fitch*, 787 F. Supp. 3d 262, 276 (S.D. Miss. 2025).

¹⁴⁵ *Griffin*, 2025 WL 978607, at *8.

¹⁴⁶ *Id.* (citing S.B. 396, 94th Gen. Assemb., 2023 Reg. Sess. (Ark. 2023) (codified as amended at ARK. CODE ANN. §§ 4-88-1401 to 4-88-1404 (2023))).

¹⁴⁷ See *supra* “Laws Targeting Expression or Content.”

that strict scrutiny applies.¹⁴⁸ These courts have primarily pointed to provisions defining which platforms are covered by the respective laws—an issue discussed earlier¹⁴⁹—as the reason the laws are content based.¹⁵⁰ Generally, when courts have concluded that strict scrutiny applies to a law restricting minors’ access to platforms, the courts have held that the law is or is likely unconstitutional.¹⁵¹

Some other trial courts have determined that restrictions on minors’ access to platforms violate or likely violate the First Amendment even under the intermediate scrutiny standard.¹⁵² For example, a trial court reviewing a Florida law (Florida’s HB3) applied intermediate scrutiny and concluded that “the law’s restrictions”—banning children under fourteen years old from accessing social media platforms and requiring parental consent for fourteen- and fifteen-year-olds—“are an extraordinarily blunt instrument for furthering” the government’s interest in limiting children’s exposure to purportedly addictive features on the platforms.¹⁵³ The court therefore decided that Florida’s HB3 was likely unconstitutional and preliminarily enjoined its enforcement.¹⁵⁴

A divided panel of the Eleventh Circuit temporarily stayed the district court’s preliminary injunction pending appeal.¹⁵⁵ The panel majority agreed with the trial court that intermediate scrutiny applied,¹⁵⁶ but the appellate court concluded that Florida’s law likely does not violate the First Amendment.¹⁵⁷ Florida “is likely to establish,” the court explained, “that it has a legitimate and substantial interest in regulating young minors’ use of platforms employing addictive features,” and that the law’s restrictions were appropriately tailored to this interest.¹⁵⁸ To support the tailoring conclusion, the Eleventh Circuit pointed out that Florida’s restrictions did not apply

¹⁴⁸ See, e.g., *NetChoice v. Jones*, 822 F. Supp. 3d 656, 674 (E.D. Va. 2026) (“Having determined that the definition of ‘social media platform’ in SB 854 creates content-based regulations of speech, the Court now evaluates whether SB 854 can withstand strict scrutiny analysis.”); *Fitch*, 787 F. Supp. 3d at 276 (“The facial distinctions H.B. 1126 draws based on the message a particular digital service provider conveys, or the more subtle content-based restrictions based upon the speech’s function or purpose, render the Act content-based, and therefore subject to strict scrutiny.”).

¹⁴⁹ See *supra* “Laws Defining Scope of Coverage.”

¹⁵⁰ See, e.g., *Jones*, 822 F. Supp. 3d at 662 (“SB 854’s definition of ‘social media platform’ contains exemptions” that “overtly make[] a distinction based on the following topics: news, sports, entertainment, and ecommerce. There is no limitation on speech for those topics. However, presumably for other topics there would be a . . . restriction.”); *Fitch*, 787 F. Supp. 3d at 275 (“Essentially, H.B. 1126 treats or classifies digital service providers differently based upon the nature of the material they disseminate, whether it is ‘social interaction,’ as opposed to ‘news, sports, commerce, [or] online video games.’” (quoting H.B. 1126, 2026 Gen. Assemb., Reg. Sess. § 3(1)(a), (2)(c)(i) (Miss. 2026))).

¹⁵¹ See, e.g., *Jones*, 822 F. Supp. 3d at 676; *Fitch*, 787 F. Supp. 3d at 280.

¹⁵² *Comput. & Commc’ns Indus. Ass’n v. Uthmeier*, 826 F. Supp. 3d 1358, 1382 (N.D. Fla. 2025), *stayed pending appeal*, No. 25-11881, 2025 WL 3458571 (11th Cir. Nov. 25, 2025); see also *Jones*, 822 F. Supp. 3d at 676 (“Even if SB 854 is analyzed under the more lenient intermediate scrutiny standard, it is still likely to fail.”); *NetChoice v. Murrill*, 812 F. Supp. 3d 594, 651 (M.D. La. 2025) (“The Act’s age-verification and parental-consent requirements fail strict and intermediate scrutiny.”); *Fitch*, 787 F. Supp. 3d at 281 (“Simply put, the Act is not sufficiently narrowly tailored to serve the State’s interests even under intermediate scrutiny.”). In one of these cases, the reviewing court held that the law at issue was content neutral and should therefore be subject to intermediate scrutiny. *Uthmeier*, 826 F. Supp. 3d at 1379–82. In the other cases, the reviewing courts held that the law at issue did not satisfy strict or intermediate scrutiny, so it was likely unconstitutional under either standard. *Jones*, 822 F. Supp. 3d at 676; *Murrill*, 812 F. Supp. 3d at 651; *Fitch*, 787 F. Supp. 3d at 280.

¹⁵³ *Uthmeier*, 826 F. Supp. 3d at 1383 (citing H.B. 3, 28th Leg., 2d Reg. Sess. (Fla. 2024) (codified as amended at FLA. STAT. §§ 501.1736–501.1738 (2024))).

¹⁵⁴ *Id.* at 1390.

¹⁵⁵ *Comput. & Commc’ns Indus. Ass’n v. Uthmeier*, No. 25-11881, 2025 WL 3458571, at *1 (11th Cir. Nov. 25, 2025).

¹⁵⁶ *Id.* at *4. As discussed earlier, the appeals court held that the coverage definition in Florida’s HB3 was content neutral. See *supra* “Laws Defining Scope of Coverage.”

¹⁵⁷ *Uthmeier*, 2025 WL 3458571, at *6.

¹⁵⁸ *Id.*

at all to “older minors” above the age of fifteen, and that, rather than bar minors from social media altogether, the law “simply prevents them from creating accounts on platforms that employ addictive features.”¹⁵⁹

Other trial court decisions on the constitutionality of state age restrictions on platform access have also been appealed to U.S. Courts of Appeals.¹⁶⁰ Although most of these appeals have not been resolved as of the date of this writing, the Sixth Circuit has rejected a facial First Amendment challenge to Ohio’s Parental Notification by Social Media Operators Act.¹⁶¹ Ohio’s law required that covered platforms either obtain verifiable parental consent for any contract with a minor—including “terms and conditions precedent to creating user accounts”—or deny the minor access to the platform.¹⁶² Two judges on the Sixth Circuit panel hearing the First Amendment challenge to this law agreed the challenge failed,¹⁶³ though the judges disagreed about why it failed.¹⁶⁴ One judge held that Ohio’s law was subject to but survived strict scrutiny.¹⁶⁵ The other judge held that the facial challenge failed because the challengers did not provide an adequate record for the court “to decide which of [The Act’s] applications violate the First Amendment, and to measure them against the rest.”¹⁶⁶ As a result, the judge concluded, the challengers “manifestly failed to meet [their] overbreadth burden under” *Moody v. NetChoice, LLC*.¹⁶⁷

In addition to the decisions from the Sixth and Eleventh Circuits, one Supreme Court Justice has weighed in at a preliminary stage of a challenge to a Mississippi law (Mississippi’s HB1126) requiring parental consent before a minor creates an account with a covered platform.¹⁶⁸ Like Florida’s HB3, a trial court preliminary enjoined Mississippi’s HB1126, finding that the law likely violates the First Amendment.¹⁶⁹ In the trial court’s view, the law did not survive either strict or intermediate scrutiny.¹⁷⁰ As with Florida’s HB3, a federal appellate court agreed to stay

¹⁵⁹ *Id.*

¹⁶⁰ See *NetChoice, LLC v. Fitch*, No. 25-60348, 2025 WL 2078435 (5th Cir. July 17, 2025); *NetChoice, LLC v. Reyes*, 748 F. Supp. 3d 1105 (D. Utah 2024), *appeal docketed*, No. 24-4100 (10th Cir. Oct. 11, 2024); *NetChoice, LLC v. Carr*, 789 F. Supp. 3d 1200 (N.D. Ga. 2025), *appeal docketed*, No. 25-12436 (11th Cir. July 16, 2025); *NetChoice, LLC v. Griffin*, No. 5:23-CV-5105, 2025 WL 978607 (W.D. Ark. Mar. 31, 2025), *appeal docketed*, No. 25-1889 (8th Cir. May 2, 2025); *NetChoice v. Murrill*, 812 F. Supp. 3d 594 (M.D. La. 2025), *appeal docketed*, No. 26-30016 (5th Cir. Jan. 14, 2026); *NetChoice v. Jones*, 822 F. Supp. 3d 656 (E.D. Va. 2026), *appeal docketed*, No. 26-1252 (4th Cir. Mar. 6, 2026).

¹⁶¹ *NetChoice, LLC v. Yost*, 180 F.4th 268, 275 (6th Cir. 2026) (discussing H.B. 33, 135th Gen. Assemb., Reg. Sess. (Ohio 2023)).

¹⁶² *Id.* at 277–79 (opinion of Clay, J.).

¹⁶³ *Id.* at 292 (opinion of Clay, J.); *id.* at 297 (Batchelder, J., concurring in the judgment).

¹⁶⁴ *Id.* at 292–93 (opinion of Clay, J.); *id.* at 297–98 (Batchelder, J., concurring in the judgment). Both judges agreed, however, that the platforms challenging the law lacked standing to assert the First Amendment rights of minor users and therefore could rely only on their own free speech rights in the challenge. *Id.* at 285 (opinion of Clay, J.); *id.* at 309 (Batchelder, J., concurring in the judgment).

¹⁶⁵ *Id.* at 286–93 (opinion of Clay, J.).

¹⁶⁶ *Id.* at 310 (Batchelder, J., concurring in the judgment) (quoting *Moody v. NetChoice, LLC*, 603 U.S. 707, 725 (2024)).

¹⁶⁷ *Id.* at 315; see *supra* “Facial Challenges” (discussing plaintiffs’ burden under *Moody v. NetChoice, LLC*).

¹⁶⁸ *NetChoice, LLC v. Fitch*, 145 S. Ct. 2658 (2025) (mem.); *NetChoice, LLC v. Fitch*, 787 F. Supp. 3d 262, 269 (S.D. Miss. 2025).

¹⁶⁹ *Fitch*, 787 F. Supp. 3d at 283.

¹⁷⁰ *Id.* at 275–76, 281. The definition at issue excluded a platform if it “[p]rimarily functions to provide a user with access to news, sports, commerce, online video games or content primarily generated or selected by the digital service provider.” *Id.* at 275 (citing H.B. 1126, Gen. Assemb., 2025 Reg. Sess. § 3(2)(c)(i) (Miss. 2025)). According to the court, this coverage definition can “be viewed as either drawing a facial distinction based on the message the digital (continued...) ”

the trial court’s preliminary injunction pending appeal.¹⁷¹ The challengers then asked the Supreme Court to reverse the stay,¹⁷² and the Supreme Court declined to do so.¹⁷³ Although the Supreme Court’s order did not provide reasoning, Justice Kavanaugh wrote a statement concurring in the denial of the application in which he explained that, in his view, while the platforms challenging Mississippi’s HB1126 had not satisfied the stringent standard for interim relief, they had nonetheless demonstrated that they were likely to succeed on their First Amendment claims.¹⁷⁴

Considerations for Congress

Some Members of Congress have proposed federal restrictions on minor users’ access to certain online platforms.¹⁷⁵ The Kids Off Social Media Act, for example, would provide that “[a] social media platform shall not permit an individual to create or maintain an account or profile if it knows that the individual is a child” under 13 years old.¹⁷⁶ The KIDS Act, which passed the House in 2026, would impose age verification requirements for certain websites that publish adult content.¹⁷⁷ Although many cases challenging state restrictions on minors’ access to online platforms are still proceeding,¹⁷⁸ court opinions to date provide some guidance about how courts would likely evaluate a federal restriction on minors accessing particular online platforms.

A number of courts reviewing state restrictions on minors’ access to online platforms have determined that the laws are either content based or content neutral depending on the way the laws at issue define which platforms are subject to the restrictions.¹⁷⁹ Accordingly, the First Amendment issues related to definitions of platforms covered by a law, discussed above,¹⁸⁰ are

service provider conveys (i.e., news and sports versus social interaction), or a more subtle content-based restriction defining regulated speech by its function or purpose (i.e., providing news and sports as opposed to facilitating social interaction).” *Id.* at 275–76.

¹⁷¹ *NetChoice, LLC v. Fitch*, No. 25-60348, 2025 WL 2078435, at *1 (5th Cir. July 17, 2025). The circuit court’s one-sentence order granting the stay did not explain the court’s reasoning. *Id.*

¹⁷² *Fitch*, 145 S. Ct. at 2658.

¹⁷³ *Id.*

¹⁷⁴ *Id.* (Kavanaugh, J., concurring in the denial of the application to vacate stay) (citing *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024); *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786 (2011); *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461 (2025)). Because Justice Kavanaugh wrote only for himself, his statements do not necessarily provide information about the other eight Justices’ views.

¹⁷⁵ *See, e.g.*, Kids Off Social Media Act, S. 278, 119th Cong. (2026); Kids Off Social Media Act, H.R. 7433, 119th Cong. (2026); App Store Accountability Act, S. 1586, 119th Cong. (2025); App Store Accountability Act, H.R. 3149, 119th Cong. (2025).

¹⁷⁶ S. 278 § 103(a); H.R. 7433 § 103(a).

¹⁷⁷ KIDS Act, H.R. 7757, 119th Cong. § 103 (2026).

¹⁷⁸ *See NetChoice, LLC v. Fitch*, No. 25-60348, 2025 WL 2078435 (5th Cir. July 17, 2025); *NetChoice, LLC v. Reyes*, 748 F. Supp. 3d 1105 (D. Utah 2024), *appeal docketed*, No. 24-4100 (10th Cir. Oct. 11, 2024); *NetChoice, LLC v. Carr*, 789 F. Supp. 3d 1200 (N.D. Ga. 2025), *appeal docketed*, No. 25-12436 (11th Cir. July 16, 2025); *NetChoice, LLC v. Yost*, 778 F. Supp. 3d 923 (S.D. Ohio 2025), *rev’d and remanded on other grounds*, 180 F.4th 268 (6th Cir. 2026); *NetChoice, LLC v. Griffin*, No. 5:23-CV-5105, 2025 WL 978607 (W.D. Ark. Mar. 31, 2025), *appeal docketed*, No. 25-1889 (8th Cir. May 2, 2025); *NetChoice v. Murrill*, 812 F. Supp. 3d 594 (M.D. La. 2025), *appeal docketed*, No. 26-30016 (5th Cir. Jan. 14, 2026); *NetChoice v. Jones*, 822 F. Supp. 3d 656 (E.D. Va. 2026), *appeal docketed*, No. 26-1252 (4th Cir. Mar. 6, 2026).

¹⁷⁹ *See, e.g., Jones*, 822 F. Supp. 3d at 672 (“SB 854’s definition of ‘social media platform’ contains exemptions” that “overtly make[] a distinction based on the following topics: news, sports, entertainment, and ecommerce. There is no limitation on speech for those topics. However, presumably for other topics there would be a . . . restriction.”); *Fitch*, 787 F. Supp. 3d at 275 (“Essentially, H.B. 1126 treats or classifies digital service providers differently based upon the nature of the material they disseminate, whether it is ‘social interaction,’ as opposed to ‘news, sports, commerce, [or] online video games.’” (quoting H.B. 1126, Gen. Assemb., 2025 Reg. Sess. § 3(1)(a), (2)(c)(i) (Miss. 2025))).

¹⁸⁰ *See supra* “Laws Defining Scope of Coverage.”

important to determining the standard of scrutiny a court is likely to apply to a law that restricts minor access to an online platform.

Courts that have treated minor-access restrictions as content neutral, and thus applied intermediate scrutiny, have usually determined that the protection of minor users is a legitimate and substantial interest.¹⁸¹ The courts' conclusions about whether the restrictions at issue are constitutional have therefore turned on tailoring.¹⁸² The Eleventh Circuit concluded that a Florida law was likely constitutional after explaining that the law did not “block[] children from accessing social media altogether.”¹⁸³ Instead, it restricted minors only from “creating accounts on platforms that employ addictive features” and are often used by “children and young teens.”¹⁸⁴ By comparison, a federal trial court concluded that a Mississippi law did not survive intermediate scrutiny when it “preclude[d] minors under 18 years old from accessing all content on social media websites, absent affirmative parental consent, regardless of whether the content concerns or negatively affects minors’ physical and psychological wellbeing.”¹⁸⁵ Based on these decisions, Congress might consider ways to narrowly tailor laws that restrict minors’ access to online platforms, especially by preserving minors’ ability to access content that is not likely to be harmful.

For more considerations related to identifying minors online, see CRS Report R47884, *Identifying Minors Online*, by Clare Y. Cho (2026).

Laws Targeting Particular Content or Harms

Laws that target specific types of online content can raise concerns that the government is restricting speech because of hostility to the ideas or messages conveyed, potentially triggering heightened constitutional scrutiny. Even if the government focuses on specific harms caused by speech rather than expressly targeting the speech itself, a law might trigger strict constitutional scrutiny if, for example, the law requires regulated platforms to address those harms by restricting speech. At the same time, Supreme Court jurisprudence establishes that the government can restrict certain, historically limited types of content.¹⁸⁶ Laws narrowly targeted at these so-called unprotected categories of speech, such as commercial fraud or obscenity, therefore might not violate the First Amendment.¹⁸⁷

Laws Targeting Particular Content

Some state laws have focused on restricting online content that legislatures have identified as particularly harmful, or on encouraging sites to host speech seen as valuable. However, as discussed above, laws that restrict or compel speech based on “the topic discussed or the idea or message expressed” usually trigger a heightened standard of constitutional review known as *strict*

¹⁸¹ *Comput. & Commc’ns Indus. Ass’n v. Uthmeier*, No. 25-11881, 2025 WL 3458571, at *5 (11th Cir. Nov. 25, 2025).

¹⁸² *Id.* at *6.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *NetChoice, LLC v. Fitch*, 787 F. Supp. 3d 262, 281 (S.D. Miss. 2025).

¹⁸⁶ *E.g., R.A.V. v. City of St. Paul*, 505 U.S. 377, 382–83 (discussing these “few limited areas” where “our society . . . has permitted restrictions upon the content of speech”).

¹⁸⁷ *See, e.g., id.* at 383, 388.

scrutiny.¹⁸⁸ Strict scrutiny requires the government to show the law is the least restrictive means to achieve a compelling interest.¹⁸⁹

As an example, Texas’s Securing Children Online Through Parental Empowerment (SCOPE) Act required covered platforms to create “a strategy to prevent” minors from being exposed to “content that promotes, glorifies, or facilitates” substance abuse, self-harm, bullying, and harassment, among other categories.¹⁹⁰ As part of this strategy, the Act required platforms to use filtering technology to block the specified content.¹⁹¹ A trial court said these “monitoring-and-filtering requirements” were “as content based as it gets”: they “explicitly identify discrete categories of speech and single them out to be filtered and blocked.”¹⁹² The court thus applied strict scrutiny and concluded the law was not narrowly tailored, preliminarily enjoining the filtering requirement.¹⁹³ On appeal, the Fifth Circuit affirmed this outcome without reaching the constitutional question.¹⁹⁴ The appeals courts held instead that federal law preempted the state’s monitoring and filtering requirement—a legal issue discussed at the end of this report.¹⁹⁵ While the Fifth Circuit did not affirm the trial court’s First Amendment reasoning, it observed in its preemption analysis that the provisions at issue were “all about filtering content.”¹⁹⁶

Similarly, an Arkansas trial court applied strict scrutiny to a law creating liability for knowingly or willfully facilitating a minor’s exposure to “‘online content promoting, or otherwise advocating, self-harm or suicide,’ if, ‘following exposure to’ that content, the minor ‘commits suicide or attempts to commit suicide that results in significant bodily or cognitive harm.’”¹⁹⁷ The court viewed the law as content based, as liability was premised on the content of the speech to which the minor user was exposed.¹⁹⁸ Applying strict scrutiny, the court assumed the state had a compelling interest in preventing self-harm but said the state had not shown why its existing criminal prohibitions on encouraging suicide would not be sufficient to achieve that goal.¹⁹⁹

Some courts have also applied or suggested they would apply strict scrutiny to state social media laws that appear to *compel* speech rather than restrict it based on its content.²⁰⁰ For instance, litigants raised compelled speech concerns with a Florida law preventing platforms from restricting the content of political candidates or “journalistic enterprises”—arguably compelling

¹⁸⁸ *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015); *supra* “Laws Targeting Expression or Content.”

¹⁸⁹ *Reed*, 576 U.S. at 163.

¹⁹⁰ H.B. 18, 88th Leg., 2023 Reg. Sess. (Tex. 2023) (codified as amended at TEX. BUS. & COM. CODE ANN. § 509.053(a) (West 2026)).

¹⁹¹ TEX. BUS. & COM. CODE ANN. § 509.053(b).

¹⁹² *Comput. & Commc’ns Indus. Ass’n v. Paxton*, 747 F. Supp. 3d 1011, 1036 (W.D. Tex. 2024), *aff’d on other grounds*, No. 24-50721, 2026 WL 2130729 (5th Cir. July 24, 2026).

¹⁹³ *Id.* The court also doubted the state’s ability to prove it had a compelling interest for all of the categories of content listed in the law. *Id.*

¹⁹⁴ *Comput. & Commc’ns Indus. Ass’n*, 2026 WL 2130729, at *14.

¹⁹⁵ *Id.*; *infra* “Section 230 of the Communications Act of 1934.”

¹⁹⁶ *Comput. & Commc’ns Indus. Ass’n*, 2026 WL 2130729, at *12.

¹⁹⁷ *NetChoice v. Griffin*, 812 F. Supp. 3d 905, 919 (W.D. Ark. 2025), *appeal docketed*, No. 26-1096 (8th Cir. Jan. 16, 2026).

¹⁹⁸ *Id.* at 920.

¹⁹⁹ *Id.* at 922–23.

²⁰⁰ *See generally*, e.g., CRS In Focus IF12388, *First Amendment Limitations on Disclosure Requirements*, by Valerie C. Brannon et al. (2023). General disclosure or transparency requirements are discussed in more detail in a later section, *infra* “Laws Requiring Disclosures.” This section discusses laws requiring disclosures about specific types of user-generated content.

the platforms to carry potentially unwanted speech.²⁰¹ The Eleventh Circuit said these provisions were “self-evidently content-based and thus subject to strict scrutiny.”²⁰² The court explained that, as an example, “the restriction on deprioritizing posts ‘about . . . a candidate,’ . . . regulates speech based on ‘the topic discussed,’ . . . and is therefore clearly content-based.”²⁰³

The Supreme Court subsequently vacated this Eleventh Circuit opinion and another opinion appealed from the Fifth Circuit, but did so “for reasons separate from the First Amendment merits.”²⁰⁴ Nonetheless, the Court expanded on the First Amendment merits, saying the discussion was necessary to prevent the Fifth Circuit from repeating errors in its substantive analysis on remand.²⁰⁵ Specifically, the Court reasoned that when online platforms like Facebook and YouTube “use their Standards and Guidelines to decide which third-party content those feeds will display, . . . they are making expressive choices” that “receive First Amendment protection.”²⁰⁶ The Court did not specifically rule on the Eleventh Circuit’s First Amendment analysis and did not clarify whether regulations of the platforms’ editorial choices should receive intermediate or strict scrutiny.²⁰⁷ Litigation of Florida’s law is proceeding on remand.²⁰⁸ Under the Supreme Court’s approach, it is possible (but not guaranteed) for the lower courts to conclude again that the Florida law’s provisions on political candidates and journalistic enterprises are content based and trigger strict scrutiny. In an order concluding there were outstanding factual disputes, the trial court said that the platforms used “mixed curation” driven by both “human editorial discretion and . . . algorithms or artificial intelligence.”²⁰⁹ The court further held that “the First Amendment applies to mixed curation” and Florida’s “regulation must pass appropriate First Amendment scrutiny.”²¹⁰

The compelled speech issue also came up in litigation over a New York law requiring platforms to have a policy and reporting mechanism for “hateful conduct.”²¹¹ The law defined *hateful conduct* as using social media “to vilify, humiliate, or incite violence against a group or a class of persons on the basis of race, color, religion, ethnicity, national origin, disability, sex, sexual orientation, gender identity or gender expression.”²¹² The Second Circuit said this law would

²⁰¹ *NetChoice, LLC v. Moody*, 546 F. Supp. 3d 1082, 1084–85 (N.D. Fla. 2021), *aff’d in part, vacated in part, remanded sub nom.*, *NetChoice, LLC v. Att’y. Gen.*, 34 F.4th 1196 (11th Cir. 2022), *vacated and remanded sub nom.*, *Moody v. NetChoice*, 603 U.S. 707 (2024).

²⁰² *NetChoice*, 34 F.4th at 1226.

²⁰³ *Id.* (first quoting FLA. STAT. § 501.2041(2)(h) (2023), and then *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)).

²⁰⁴ *Moody*, 603 U.S. at 717. The Court held that the lower courts’ analysis did not properly account for the plaintiffs’ facial challenges. *Id.* at 717–18. For a discussion of this aspect of the Court’s ruling, see *supra* “Facial Challenges.”

²⁰⁵ *Moody*, 603 U.S. at 726–27.

²⁰⁶ *Id.* at 740.

²⁰⁷ *See id.* The Supreme Court did say, however, that the Eleventh Circuit “saw the First Amendment issues much as we do.” *Id.* at 727.

²⁰⁸ *See NetChoice, LLC v. Uthmeier*, No. 4:21-CV-00220, 2025 WL 3534514, at *14 (N.D. Fla. May 22, 2025) (denying motion to dismiss and holding the amended complaint “plausibly alleges some of the challenged provisions,” including the provision prohibiting a platform from using post-prioritization algorithms for content “about” a political candidate, “are unconstitutionally vague”). The trial court denied both parties’ motions for summary judgment, Order Denying Summary Judgment at 2, *NetChoice, LLC v. Uthmeier*, No. 4:21-CV-00220 (N.D. Fla. June 18, 2026), Dkt. No. 335, and has set a trial date of February 8, 2027.

²⁰⁹ Order Denying Summary Judgment at 8, *NetChoice, LLC v. Uthmeier*, No. 4:21-CV-00220 (N.D. Fla. June 18, 2026), Dkt. No. 335.

²¹⁰ *Id.* at 9.

²¹¹ *Volokh v. James*, 148 F.4th 71, 81 (2d Cir. 2025). This case is also discussed *infra* “Laws Requiring Other Types of Disclosures.”

²¹² N.Y. GEN. BUS. LAW § 394-ccc(a) (McKinney 2026).

trigger heightened constitutional scrutiny and “unconstitutionally burden the social media networks’ First Amendment rights” if it was interpreted to require “disclosures that reference ‘hateful conduct’ or affirmatively encompass speech fitting within that definition.”²¹³ At the same time, the federal appeals court did not definitively rule on the law’s constitutionality, instead referring the matter to the state’s highest court to determine the law’s proper interpretation.²¹⁴ The New York Court of Appeals subsequently concluded platforms could comply with the law without referring to the statutory definition of hateful conduct, so long as the required reporting mechanism was broad enough to allow users to report content falling within the statutory definition and the platforms’ reporting similarly included content falling within the definition.²¹⁵

Laws Targeting Advertisements and Commercial Speech

Some states have adopted laws restricting advertising to minors on online platforms, such as by prohibiting using minors’ personal information to display advertisements to them.²¹⁶ Texas, for instance, prohibited targeting minors with advertisements for activities that are unlawful for minors.²¹⁷

Many advertisements are viewed by courts as commercial speech, which receives different treatment under the First Amendment.²¹⁸ The Supreme Court has defined *commercial speech* both as speech that “does ‘no more than propose a commercial transaction’”²¹⁹ and as “expression related solely to the economic interests of the speaker and its audience.”²²⁰ The Court has often held that advertisements for goods or services have qualified as commercial speech.²²¹ At the same time, the Court has acknowledged that in some instances, speech may lose “its commercial character when it is inextricably intertwined with otherwise fully protected speech”—such as in the context of charitable solicitation.²²²

Restrictions of commercial speech are ordinarily subject to a constitutional analysis known as *Central Hudson* intermediate scrutiny.²²³ In *Central Hudson Gas & Electric Corp. v. Public*

²¹³ *Volokh*, 148 F.4th at 89–90.

²¹⁴ *Id.* at 100.

²¹⁵ *Volokh v. James*, No. 58, 2026 WL 1790976, at *5 (N.Y. June 23, 2026) (“For example, a network might disclose that out of respect for its users’ freedom of expression, it will not regulate or remove any content posted on its platform. Such a disclosure would necessarily inform users that the network will do nothing in response to reports falling within the statutory definition of hateful conduct—or any other content.”).

²¹⁶ *E.g.*, GA. CODE ANN. § 9-6-3 (2026); LA. STAT. § 51:1753 (2026); S.C. CODE ANN. § 39-80-40(C) (2026).

²¹⁷ TEX. BUS. & COM. CODE ANN. § 509.055 (West 2026).

²¹⁸ *E.g.*, *Zauderer v. Off. of Disciplinary Couns.*, 471 U.S. 626, 637 (1985).

²¹⁹ *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 762 (1976) (quoting *Pitt. Press Co. v. Pitt. Comm’n on Hum. Rels.*, 413 U.S. 376, 385 (1973)).

²²⁰ *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 561 (1980). *See also, e.g.*, *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66–67 (1983) (concluding pamphlets are commercial speech due to a combination of three factors, none of which was sufficient on its own: (1) they “are conceded to be advertisements”; (2) they refer “to a specific product”; and (3) the company “has an economic motivation for mailing the pamphlets”).

²²¹ *E.g.*, *Zauderer*, 471 U.S. at 637; *Cent. Hudson*, 447 U.S. at 561–62; *Va. State Bd. of Pharm.*, 425 U.S. at 762.

²²² *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 796 (1988). *Cf., e.g.*, *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 474–75 (1989) (applying commercial speech standards to a sales pitch, holding that including informational home economics elements did not render the “entirety” of the sales pitch noncommercial, where “there is nothing whatever ‘inextricable’ about the noncommercial aspects of these presentations”).

²²³ This standard of intermediate scrutiny is similar to the intermediate scrutiny applied to content-neutral speech regulations. *See, e.g.*, Killion, CRS Report R47986, *Freedom of Speech: An Overview*, *supra* note 33. Certain laws requiring disclosures of commercial speech may be subject to a lower level of scrutiny, discussed *infra* “First Amendment Background: Compelled Speech and Commercial Disclosure Requirements.”

Service Commission, the Supreme Court announced general principles governing review of commercial speech.²²⁴ First, to be protected by the First Amendment, commercial speech “must concern lawful activity and not be misleading.”²²⁵ If the commercial speech is protected, then the government must show its regulation of that speech “directly advances” a “substantial” government interest and “is not more extensive than is necessary to serve that interest.”²²⁶

As compared to laws generally regulating commercial speech, laws specifically prohibiting advertisements of *unlawful* activity are unlikely to violate the First Amendment, since such speech is considered unprotected and therefore can be banned.²²⁷ Intermediate scrutiny might still apply, however, if an advertisement involves activity that is illegal for some but not others. For instance, the Supreme Court applied intermediate scrutiny to evaluate a state law aimed at limiting the advertisement of tobacco products to minors—advertising that is protected as to adults.²²⁸ The Court held that a number of the advertising restrictions were not sufficiently narrowly tailored and failed intermediate scrutiny.²²⁹ Accordingly, a law restricting online advertisements of activities that are illegal as to minors but not adults may receive intermediate scrutiny to assess the extent and necessity of the burden on legal speech. This is a fact-specific analysis.²³⁰

A law regulating all forms of paid advertising will likely involve lawful speech, including fully protected noncommercial advertising.²³¹ The two trial courts that have thus far reviewed state laws prohibiting targeted advertising to minors have ruled the bans likely unconstitutional, although one of those rulings was reversed on procedural grounds.²³² A Louisiana federal court suggested a law that prohibited displaying “any advertising in [a minor’s] account based on the Louisiana minor account holder’s personal information, except age and location” might be subject to strict scrutiny since the law was not limited to commercial advertisements and regulated “what material these companies can publish.”²³³ Ultimately, the court was unsure whether intermediate or strict scrutiny should apply but concluded the law failed either level of review.²³⁴ The court doubted whether the state had shown that targeted advertising, in particular, causes harms to minors.²³⁵ In addition, the court observed that the prohibition was “far from the

²²⁴ 447 U.S. at 563–66.

²²⁵ *Id.* at 566.

²²⁶ *Id.*

²²⁷ *Id.*; see also, e.g., *Pitt. Press Co. v. Pitt. Comm’n on Hum. Rels.*, 413 U.S. 376, 388 (1973) (holding the government can prohibit advertisements of “illegal commercial activity”—specifically, discriminatory employment).

²²⁸ *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 554–55, 571 (2001); see also, e.g., *Junior Sports Mags. Inc. v. Bonta*, 80 F.4th 1109, 1113 (9th Cir. 2023) (holding California law prohibiting advertising firearms in a way that is attractive to minors failed intermediate scrutiny review, mentioning among other factors that “it sweeps in truthful ads about lawful use of firearms for adults and minors alike”).

²²⁹ *Lorillard Tobacco Co.*, 533 U.S. at 562 (emphasizing the “substantial geographical reach” of a ban on advertising in the vicinity of schools or playgrounds); *id.* at 566 (concluding a ban on indoor advertisements lower than five feet is likely ineffective at protecting children, saying that children “have the ability to look up”).

²³⁰ For instance, in *Lorillard*, unlike the ban on indoor advertisements lower than five feet, the Court upheld restrictions on self-service displays and a requirement that tobacco products be placed out of the reach of all consumers. *Id.* at 569.

²³¹ E.g., *NetChoice v. Murrill*, 812 F. Supp. 3d 594, 654 (M.D. La. 2025).

²³² *Id.*; *Students Engaged in Advancing Tex. v. Paxton*, 765 F. Supp. 3d 575, 598 (W.D. Tex. 2025), *vacated sub nom.*, *Comput. & Commc’ns Indus. Ass’n v. Paxton*, No. 24-50721, 2026 WL 2130729, at *14 (5th Cir. July 24, 2026) (concluding the plaintiffs lacked standing).

²³³ *Murrill*, 812 F. Supp. 3d at 653–54 (alteration in original) (quoting LA. STAT. § 51:1753(2) (2026)).

²³⁴ *Id.*

²³⁵ *Id.*

least restrictive option.” the state could have adopted an opt-out approach instead, allowing “minor account holders to opt out of targeted advertising (or all advertising, for that matter).”²³⁶

Laws Targeting Categories of Unprotected Speech

As mentioned, the Supreme Court has recognized that certain historically limited categories of speech, such as defamation or fraud, can be restricted without automatically triggering strict scrutiny.²³⁷ In considering the constitutionality of a law that targets so-called unprotected categories of speech, courts assess whether the prohibited speech falls within the contours of these historically limited categories,²³⁸ whether the law creates additional content- or viewpoint-based distinctions within a category,²³⁹ and whether the prohibition itself contains sufficient constitutional safeguards, such as a scienter requirement that the offender must “know” the nature of the material.²⁴⁰

As a potential example, California enacted a law requiring social media platforms to provide a mechanism to users to report *child sexual abuse material (CSAM)*—a term defined to include federally defined “child pornography”—and requiring platforms to block that material in certain circumstances.²⁴¹ The Supreme Court has said the government can prohibit CSAM.²⁴² Thus, California might claim that its law is constitutional to the extent it targets only an unprotected category of speech.

At the same time, the Court has recognized that the government’s “authority to proscribe child pornography is not . . . unlimited.”²⁴³ In 2002, the Court held that a prior version of the federal definition of child pornography was unconstitutional, to the extent it banned material that “appear[ed] to” depict child sexual abuse but did not depict an actual child.²⁴⁴ The Court observed that beyond images involving child abuse, the law could encompass presumably protected speech such as “a picture in a psychology manual, as well as a movie depicting the horrors of sexual abuse.”²⁴⁵ It also distinguished “virtual” images from “actual” abuse material.²⁴⁶ In light of this decision, lower courts in recent years have considered whether the First Amendment is a potential defense in CSAM prosecutions involving the distribution or possession of AI-generated or digitally altered images.²⁴⁷ A court assessing California’s requirement that platforms remove

²³⁶ *Id.*

²³⁷ Killion, CRS In Focus IF11072, *The First Amendment: Categories of Speech*, supra note 37.

²³⁸ *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 251 (2002).

²³⁹ *R.A.V. v. City of St. Paul*, 505 U.S. 377, 384–90 (1992).

²⁴⁰ *United States v. Williams*, 553 U.S. 285, 294 (2008).

²⁴¹ CAL. CIV. CODE §§ 3273.65–.66 (West 2026).

²⁴² *Williams*, 553 U.S. at 288–89.

²⁴³ *Id.* at 289.

²⁴⁴ *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 240 (2002). The Court flagged but did not specifically consider the constitutionality of a separate federal provision that banned modified images of identifiable minors. *Id.* at 242.

²⁴⁵ *Id.* at 246.

²⁴⁶ *See id.* at 250–51 (stating that “[v]irtual child pornography is not ‘intrinsically related’ to the sexual abuse of children”).

²⁴⁷ *See, e.g., United States v. Robinson*, No. 8:25-CR-256-MSS-AEP, 2025 WL 2944439, at *3 (M.D. Fla. Oct. 16, 2025) (“This Court follows the burgeoning majority of cases on this issue and concludes that morphed child pornography is not protected speech. The government’s interest in preventing reputational and emotional harm to actual children depicted in such images justifies a categorical exclusion of morphed child pornography from the First Amendment.”).

reported CSAM, therefore, might consider whether the law triggers heightened scrutiny to the extent it might lead to the removal of content that does not depict an actual minor.²⁴⁸

Laws Targeting Particular Harms

In comparison to laws that require platforms to restrict specifically identified types of content, some state laws focus on specific types of harms to minors. These laws could also trigger strict scrutiny to the extent the harms are caused by constitutionally protected content hosted by the online platforms.²⁴⁹

One example of a harm-focused state law that has prompted First Amendment challenges is the California Age-Appropriate Design Code Act (CAADCA).²⁵⁰ Among other provisions,²⁵¹ the law (1) required online services likely to be accessed by children to issue a report assessing whether the service’s design could harm children, including by exposing them to harmful content;²⁵² and (2) prohibited such services from using children’s personal information in a way that “is materially detrimental to the physical health, mental health, or well-being of a child,” or from collecting unnecessary personal information unless it is in children’s best interests.²⁵³

In two separate decisions involving First Amendment challenges to the CAADCA, the Ninth Circuit concluded both of these restrictions were likely unconstitutional.²⁵⁴ Looking first at the CAADCA’s reporting requirements, the Ninth Circuit said the provisions triggered strict scrutiny.²⁵⁵ The court held that the reports compelled protected speech, “requiring covered businesses to opine on and mitigate the risk that children are exposed to harmful content online.”²⁵⁶ As previously mentioned, the Supreme Court has held that a law that compels “individuals to speak a particular message” is content based and will likely trigger strict scrutiny.²⁵⁷ The Ninth Circuit further concluded the law was likely to fail strict scrutiny, saying the state “could have easily employed less restrictive means to accomplish its protective goals, such as by (1) incentivizing companies to offer voluntary content filters or application blockers,

²⁴⁸ The California reporting and takedown requirements apply if (among other criteria) reporting users “reasonably believe” they are depicted in the material, and the platform has a “reasonable basis to believe that the reported material” is CSAM. See CAL. CIV. CODE § 3273.66 (West 2026).

²⁴⁹ In contrast, one Vermont law that focuses on specific harms seems to clarify that online *content* will not provide the basis for liability. It states that covered businesses owe a duty to minors, defining the duty, in part, as “mean[ing] the use of the” minors’ personal data “will not result in . . . reasonably foreseeable emotional distress,” but clarifying that the content a minor views will not “establish emotional distress.” VT. STAT. ANN. tit. 9, § 2449c (2025). The next section of the report discusses laws targeting design features not focused on online content. *Infra* “Laws Targeting Platform Design.”

²⁵⁰ CAL. CIV. CODE §§ 1798.99.28–40 (West 2026).

²⁵¹ See *infra* “Privacy and Related Protections” and “Laws Requiring Other Types of Disclosures.” The law is also discussed in CRS Legal Sidebar LSB11071, *NetChoice v. Bonta and First Amendment Limits on Protecting Children Online*, by Peter J. Benson (2023).

²⁵² CAL. CIV. CODE § 1798.99.31(a)(1)(B)(i) (West 2026).

²⁵³ *Id.* § 1798.99.31(b)(1).

²⁵⁴ *NetChoice, LLC v. Bonta (Bonta I)*, 113 F.4th 1101, 1121 (9th Cir. 2024); *Bonta II*, 170 F.4th 744, 765 (9th Cir. 2026).

²⁵⁵ *Bonta I*, 113 F.4th at 1119.

²⁵⁶ *Id.* at 1118–19. The court said the speech was “disconnected from any economic transaction” and could not be classified as commercial. *Id.* at 1119–20; see also *id.* at 1121 (“Strict scrutiny is warranted because the DPIA report requirement (1) compels speech with a particular message about controversial issues; and (2) deputizes private actors into censoring speech based on its content.” (citations omitted)).

²⁵⁷ *Nat’l Inst. of Family & Life Advoc. v. Becerra*, 585 U.S. 755, 766 (2018).

(2) educating children and parents on the importance of using such tools, and (3) relying on existing criminal laws that prohibit related unlawful conduct.”²⁵⁸

In a second decision, the Ninth Circuit weighed in on the CAADCA’s “data use provisions” that limit how businesses “may use a child’s personal information” to avoid certain harms.²⁵⁹ The court held that the provisions identifying the harms were likely unconstitutionally vague: the law provided no guidance as to what conduct was materially detrimental to a child or what was in children’s best interests.²⁶⁰ When a law is vague, it raises concerns that it will chill protected speech, as the regulated entities will not be able to determine what is prohibited.²⁶¹ The court said the CAADCA provisions raised a “particularly high” “risk of subjective enforcement”—allowing enforcers to discriminate against specific content or viewpoints—because the provisions had to “be assessed as to any single child whose personal information is accessed by a covered online practice.”²⁶²

While the CAADCA’s reporting requirements involved compelled speech, other state laws might require platforms to restrict speech in order to prevent specific harms.²⁶³ For example, an Arkansas law prohibited a “social media platform” from using a design that the platform “knows, or should have known through the exercise of reasonable care, causes a user to: (1) Purchase a controlled substance; (2) Develop an eating disorder; (3) Commit or attempt to commit suicide; or (4) Develop or sustain an addiction to the social media platform.”²⁶⁴

In response to a First Amendment challenge, Arkansas argued its law was “not content based” because liability was “based on the result caused by” the design, not the content displayed.²⁶⁵ A trial court disagreed, saying the law could have applications that “are likely constitutional because they involve platforms’ non-expressive conduct” as well as applications that are “more constitutionally suspect.”²⁶⁶ On the latter front, the court concluded that the law could require “platforms to change what speech they disseminate or how they prioritize that speech” to ensure they are not promoting content associated with the prohibited harms.²⁶⁷ Accordingly, the court applied strict scrutiny, given that “three of [the law’s] . . . prohibited results (drugs, eating disorders, and suicide) impose content-based restrictions on platforms’ editorial discretion and on users’ speech.”²⁶⁸

Ultimately, in considering whether the law was narrowly tailored under strict scrutiny review, the Arkansas federal court held that the law was overinclusive because platforms would have to censor protected speech that might harm “particularly susceptible users” even if the content

²⁵⁸ *Bonta I*, 113 F.4th at 1121.

²⁵⁹ *Bonta II*, 170 F.4th at 764.

²⁶⁰ *Id.* at 765–66.

²⁶¹ *Id.* at 764.

²⁶² *Id.* at 765.

²⁶³ *E.g.*, S.C. CODE ANN. § 39-80-20 (2026) (requiring covered online services to “exercise reasonable care” to prevent specified harms to minors, including compulsive usage and severe emotional distress). A lawsuit has been filed challenging this law, but as of the date of publication of this report, the trial court has not yet weighed in. *NetChoice v. Wilson*, No. 3:26-CV-00543 (D.S.C. Feb. 9, 2026).

²⁶⁴ ARK. CODE ANN. § 4-88-1502 (2025).

²⁶⁵ *NetChoice v. Griffin*, 812 F. Supp. 3d 905, 921 (W.D. Ark. 2025), *appeal docketed*, No. 26-1096 (8th Cir. Jan. 16, 2026).

²⁶⁶ *Id.* at 920.

²⁶⁷ *Id.* at 922.

²⁶⁸ *Id.* at 920.

would not harm most users.²⁶⁹ The law was also underinclusive, in the court’s view, because it regulated potentially harmful content only on social media platforms, and did not address similarly harmful content communicated through other media.²⁷⁰ The court said this “underinclusivity is especially concerning because” the law only limits minors’ “access to forums in which to discuss—rather than merely view” speech.²⁷¹ As such, the court concluded the law was likely unconstitutional because it was not “narrowly tailored to achieving the State’s asserted interests in protecting Arkansans from drug use, eating disorders, and suicide.”²⁷²

Considerations for Congress

A number of bills currently pending in Congress target specific online content or harms. For example, the Digital Integrity in Democracy Act would require social media platforms to remove “false election administration information” in certain circumstances.²⁷³ The Kids Online Safety Act would prohibit platforms from facilitating the advertising of drugs and gambling to minors.²⁷⁴ The KIDS Act would require covered platforms to implement “reasonable policies, practices, and procedures” to “address” specific harms to minors, including certain threats of physical violence, sexual exploitation, and drug use.²⁷⁵ In addition, in 2025, Congress enacted the Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks (TAKE IT DOWN) Act, requiring covered platforms to remove nonconsensual intimate images at the request of the depicted individual.²⁷⁶

A law that targets specific types of online content based on “the topic discussed or the idea or message expressed” can trigger strict scrutiny—a standard that renders a law presumptively unconstitutional.²⁷⁷ Laws targeting commercial speech generally receive intermediate scrutiny.²⁷⁸ Even if a law attempts to focus on the harm caused by online activity, a court might still apply heightened scrutiny if the harm is caused by protected speech and would require platforms to restrict that speech.²⁷⁹ If a law restricts or compels protected expression and a court applies strict or intermediate scrutiny, the court will consider whether the government could achieve its interest with a less speech-restrictive alternative. For example, courts have asked for evidence about the effectiveness of opt-out provisions, incentives for voluntary private action, or educational

²⁶⁹ *Id.* at 922.

²⁷⁰ *Id.* at 923.

²⁷¹ *Id.* at 924.

²⁷² *Id.*

²⁷³ S. 840, 119th Cong. § 3(b) (2025).

²⁷⁴ S. 1748, 119th Cong. § 103(d) (2026); H.R. 6484, 119th Cong. § 4(d) (2026); *see also* KIDS Act, H.R. 7757, 119th Cong. § 218 (2026) (incorporating the Kids Online Safety Act).

²⁷⁵ *E.g.*, H.R. 7757 § 213(a); *cf.*, *e.g.*, Algorithm Accountability Act, S. 3193, 119th Cong. § 2 (2025) (providing that a social media platform “shall exercise reasonable care . . . to prevent bodily injury or death” in certain circumstances).

²⁷⁶ Pub. L. No. 119-12, 139 Stat. 55 (2025); Killion, CRS Legal Sidebar LSB11314, *The TAKE IT DOWN Act: A Federal Law Prohibiting the Nonconsensual Publication of Intimate Images*, *supra* note 3. *Cf.*, *e.g.*, Preventing Rampant Online Technological Exploitation and Criminal Trafficking (PROTECT) Act of 2026, S. 5129, 119th Cong. (2026) (imposing various requirements before a covered platform may upload or allow a user to upload a “pornographic image”); Strengthening Transparency and Obligations to Protect Children Suffering from Abuse and Mistreatment (STOP CSAM) Act of 2025, S. 1829, 119th Cong. § 4 (as reported, June 26, 2025) (making it unlawful for interactive computer service providers to “intentionally host or store child pornography,” among other offenses).

²⁷⁷ *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

²⁷⁸ *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 566 (1980).

²⁷⁹ *See, e.g.*, *NetChoice v. Griffin*, 812 F. Supp. 3d 905, 922 (W.D. Ark. 2025), *appeal docketed*, No. 26-1096 (8th Cir. Jan. 16, 2026).

campaigns.²⁸⁰ Thus, if Congress considers a law targeting specific online content or harms, it might develop a legislative record, through committee hearings or a findings section, showing why its approach is appropriately tailored to its regulatory interest.

There are limited categories of speech that Congress could regulate under a lower standard of constitutional review.²⁸¹ If Congress attempts to regulate unlawful or misleading commercial speech,²⁸² or certain categories of unprotected speech such as CSAM,²⁸³ the First Amendment might not pose a barrier. At the same time, these historically unprotected categories of speech are limited, and a heightened standard of constitutional review might apply if a law sweeps in speech that is protected, either for adults or for everyone. In addition, the First Amendment might require certain additional protections, such as showing that a platform was aware the speech was unlawful or unprotected.²⁸⁴

Laws Targeting Platform Design

Some states have enacted laws that regulate how platforms design and implement features that display content to users. State laws that apply to platform features run the gamut from restrictions on content moderation practices,²⁸⁵ to prohibitions of features deemed addictive to users,²⁸⁶ to requirements that platforms adopt protective or privacy-enhancing features.²⁸⁷ Laws in each of these categories may include both detailed statutes that prescribe permissible and impermissible design elements²⁸⁸ and generally applicable tort laws that impose liability for negligently designed products.²⁸⁹ In some cases, courts have concluded that restricting an online platform's design restricts expression protected by the First Amendment.²⁹⁰

²⁸⁰ *E.g.*, *Bonta I*, 113 F.4th 1101, 1121 (9th Cir. 2024).

²⁸¹ See generally Killion, CRS In Focus IF11072, *The First Amendment: Categories of Speech*, supra note 37.

²⁸² *Cent. Hudson*, 447 U.S. at 566.

²⁸³ *United States v. Williams*, 553 U.S. 285, 288–89 (2008).

²⁸⁴ *See, e.g.*, *Smith v. California*, 361 U.S. 147, 152–54 (1959) (concluding that while obscenity is not protected, a state could not impose strict liability on a bookseller carrying an obscene book in stock).

²⁸⁵ *Moody v. NetChoice, LLC*, 603 U.S. 707, 720 (2024) (“In 2021, Florida and Texas enacted statutes regulating internet platforms, including the large social-media companies just mentioned. . . . [B]oth contain content-moderation provisions, restricting covered platforms’ choices about whether and how to display user-generated content to the public.”).

²⁸⁶ *E.g.*, FLA. STAT. § 501.1736(1)(e) (2026); CAL. HEALTH & SAFETY CODE §§ 27000–27007 (West 2026); N.Y. GEN. BUS. LAW § 1520 (McKinney 2026); NEB. REV. STAT. § 87-1304 (2026).

²⁸⁷ *E.g.*, CAL. CIV. CODE §§ 1798.99.28–.40 (West 2026).

²⁸⁸ *Bonta I*, 113 F.4th 1101, 1109–11 (9th Cir. 2024) (describing the CAADCA, A.B. 2273, Gen. Assemb., 2022 Reg. Sess. (2022) (codified as amended at CAL. CIV. CODE §§ 1798.99.28–.40 (West 2022))).

²⁸⁹ *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 818 (N.D. Cal. 2023) (describing design defect, failure to warn, and negligence claims alleged against Meta’s Facebook and Instagram, Google’s YouTube, ByteDance’s TikTok, and Snapchat).

²⁹⁰ *E.g.*, *Moody*, 603 U.S. at 740 (“When the platforms use their Standards and Guidelines to decide which third-party content those feeds will display, or how the display will be ordered and organized, they are making expressive choices. And because that is true, they receive First Amendment protection.”); *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d at 837 (“[T]he timing and clustering of notifications of defendants’ content to increase addictive use is entitled to First Amendment protection. There is no dispute that the content of the notifications themselves, such as awards, are speech. The Court conceives of no way to interpret plaintiffs’ claim with respect to the frequency of the notifications that would not require defendants to change when and how much they publish speech.” (citation omitted)).

Content Moderation

Some state laws regulate online platforms' choices about how to organize the information published on their platforms.²⁹¹ These laws may restrict platforms' choices about how to moderate the user content they publish, including decisions about which content to publish, delete, promote, or suppress.²⁹² Examples include both statutes explicitly governing how platforms may moderate content²⁹³ and statutes establishing general tort causes of action.²⁹⁴ In the latter category, some plaintiffs have alleged injuries in tort suits based on claims that content moderation algorithms were negligently designed or deployed.²⁹⁵

In 2024, in the *Moody v. NetChoice, LLC* case discussed above,²⁹⁶ the Supreme Court heard challenges to two content moderation laws enacted by Florida and Texas, and determined that both laws implicated the First Amendment.²⁹⁷ Texas, for example, prohibited platforms from “‘censor[ing]’ a user or a user’s expression based on viewpoint.”²⁹⁸ This prohibition, the Court explained, limited when platforms could remove posts and ban users, among other moderation decisions.²⁹⁹ The law restricted, in other words, “covered platforms’ choices about whether and how to display user-generated content to the public.”³⁰⁰ When platforms choose how to display user-generated content in curated content feeds, such as “Facebook’s News Feed and YouTube’s homepage,” the Court held, their choices are protected expression.³⁰¹ Just as a newspaper’s editorial choices and a cable operator’s choices about which channels to carry are expression protected by the First Amendment,³⁰² the *Moody* Court reasoned that online platforms’ choices are protected when they “decide which third-party content those feeds will display, or how the display will be ordered and organized.”³⁰³

²⁹¹ See *Moody*, 603 U.S. at 719–21 (describing content moderation regulations enacted by Florida and Texas). The prior section, *supra* “Laws Targeting Particular Content or Harms,” discusses laws that target particular content hosted by online platforms. This section focuses on laws targeting platform’s decisions about how to perform content moderation.

²⁹² See *Moody*, 603 U.S. at 719–21.

²⁹³ See *id.* at 720 (“The statute restricts varied ways of ‘censor[ing]’ or otherwise disfavoring posts—including deleting, altering, labeling, or deprioritizing them—based on their content or source. For example, the law prohibits a platform from taking those actions against ‘a journalistic enterprise based on the content of its publication or broadcast.’” (alteration in original) (citation omitted) (quoting FLA. STAT. § 501.2041(1)(b), (2)(j) (2024))).

²⁹⁴ See *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d at 831 (alleging negligence based on the “[u]se of algorithms to promote addictive engagement”).

²⁹⁵ See *id.*

²⁹⁶ *Supra* “Laws Targeting Particular Content.”

²⁹⁷ *Moody v. NetChoice, LLC*, 603 U.S. 707, 719–21 (2024).

²⁹⁸ *Id.* at 721 (quoting TEX. CIV. PRAC. & REM. CODE ANN. §§ 143A.002(a), .006 (West 2026)). In addition, the Florida and Texas laws compelled platforms to provide notice of certain information and explanations about certain content moderation decisions. *Id.* For a discussion of legal issues related to those aspects of the law, see “Laws Requiring Disclosures.”

²⁹⁹ *Moody*, 603 U.S. at 721.

³⁰⁰ *Id.* at 720.

³⁰¹ *Id.* at 740.

³⁰² *Id.* at 728–30 (first citing *Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241 (1974), and then *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622 (1994)).

³⁰³ *Id.* at 740. The *Moody* Court recognized that, for the platforms at issue in the case, “prioritization of content” was “achieved through the use of algorithms.” *Id.* at 734. Justice Barrett wrote separately to explain that, in her view, the First Amendment protects editorial judgments made using “algorithm[s] [that] simply implement human beings’ inherently expressive choice[s].” *Id.* at 746 (Barrett, J., concurring). Justice Barrett cautioned, however, that the First Amendment considerations could be different for different types of algorithms, and she questioned whether (continued...)

The Court declined to decide whether strict or intermediate scrutiny applied to the Texas and Florida content moderation provisions under review.³⁰⁴ The Court was clear, however, that some form of heightened First Amendment scrutiny applied.³⁰⁵ In the wake of *Moody*, lower courts have held that platforms' content moderation decisions are entitled to First Amendment protection in a variety of contexts.³⁰⁶

One federal trial court, however, held that certain online platforms failed to show at the preliminary injunction stage that their "personalized feeds" reflect protected expression.³⁰⁷ The feeds at issue were designed to provide content that would be "engaging, or 'interesting' to users."³⁰⁸ The court found that the platforms were "not making any decisions about what content will be 'interesting,' because they [were] merely relying on predictive modelling to assess what users' characteristics and history on the platform suggest will keep these same users engaged."³⁰⁹ Because these content feeds did not "convey an expressive message or reflect human editorial judgment," the court held that regulating the feeds did not restrict the protected rights at issue in *Moody*, and the platforms' argument that limiting their use of personalized feeds violated their First Amendment rights was not likely to succeed.³¹⁰

For more information on platforms' content moderation practices, see CRS Report R46662, *Social Media: Content Dissemination and Moderation Practices*, by Clare Y. Cho and Ling Zhu (2025).

Addictive Features

Some state laws restrict or prohibit platform features that legislatures have deemed "addictive" in the sense that they are designed to increase the time users spend on a platform.³¹¹ These features include

- infinite scroll, which allows content to load continuously as a user scrolls through the content;

incorporating artificial intelligence into algorithms could "attenuate the connection between content-moderation actions" and "human beings' constitutionally protected" choices. *Id.* (Barrett, J., concurring).

³⁰⁴ *Id.* at 740 (majority opinion) ("In the usual First Amendment case, we must decide whether to apply strict or intermediate scrutiny. But here we need not. Even assuming the less stringent form of First Amendment review applies, Texas's law does not pass."); see also *supra* "Laws Targeting Particular Content."

³⁰⁵ *Moody*, 603 U.S. at 740.

³⁰⁶ See *NetChoice v. Weiser*, 808 F. Supp. 3d 1223, 1237–38 (D. Colo. 2025) ("But even assuming the relevant speech at issue in this analysis is that in which social media platforms typically engage, the Court rejects Weiser's sweeping claim that 'the entire relationship between the regulated platforms and its user is commercial.' . . . [T]he Supreme Court has made clear that content moderation is expressive speech in and of itself."); *Kennedy v. Meta Platforms, Inc.*, No. 3:24-cv-02869-WHO, 2024 WL 4031486, at *16–17 (N.D. Cal. Sep. 3, 2024) ("The Supreme Court recently held that social media platforms' decisions and actions to enforce their content moderation policies are protected by the First Amendment. . . . Meta's content moderation decisions to 'deprioritize[]' political content are protected by the First Amendment."); *Patterson v. Meta Platforms, Inc.*, 244 A.D.3d 29, 38 (N.Y. App. Div. 2025) ("Thus, per *Moody*, the social media defendants are entitled to First Amendment protection for third-party content recommended to the shooter by algorithms.").

³⁰⁷ *Meta Platforms, Inc., v. Bonta*, No. 5:25-cv-9789, 2026 WL 2260373, at *5 (N.D. Cal. Aug. 5, 2026).

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.* at *6–9.

³¹¹ See *NetChoice, LLC v. Bonta*, 152 F.4th 1002, 1009 (9th Cir. 2025) (explaining that some personalized content feeds offered by platforms are designed "to maximize user time on the website and to encourage return visits" and that California enacted new regulations because it "thinks personalized feeds work too well").

- push notifications, which are alerts a platform sends to a user’s device to prompt engagement with the platform;
- “like” counts or other metrics that indicate or quantify how often users are engaging with certain content;
- autoplay, a function that causes videos or similar content to begin playing without the user first clicking on the content or clicking on a play button; and
- live streaming, which allows users to broadcast live content.³¹²

State regulations of features deemed addictive or harmful have taken several forms. Some states have enacted design codes that limit how platforms can use certain features.³¹³ California, for example, enacted a law called the Protecting Our Kids from Social Media Addiction Act³¹⁴ that prohibited platforms from providing minor users with “addictive feeds”³¹⁵ and from sending notifications to minor users during school or at night.³¹⁶ The California law also required that platforms include certain features in the default settings for minor accounts.³¹⁷ By default, a minor account must limit platform access to one hour each day, limit the account holder’s ability to view like counts, provide a feed that does not recommend content based on personal information, and be set to private mode.³¹⁸ In private mode, “only users to whom the child is connected on the addictive internet-based service or application may view or respond to content posted by the child.”³¹⁹

Other states have regulated different design features. Utah enacted a law that required platforms to disable autoplay, endless scroll, and push notifications for minor users’ accounts.³²⁰ New York required certain platforms to disable push notifications between 12:00 a.m. and 6:00 a.m. Eastern time unless a minor has parental consent for nighttime notifications.³²¹ Arkansas enacted a law prohibiting “a social media platform from using ‘a design, algorithm, or feature that the social media platform knows, or should have known through the exercise of reasonable care, causes a user to . . . [d]evelop or sustain an addiction to the social media platform.’”³²² Florida prohibited platforms from maintaining accounts for children under fourteen years old, or maintaining

³¹² See FLA. STAT. § 501.1736(1)(e) (2026); CAL. HEALTH & SAFETY CODE §§ 27000–27007 (West 2026); N.Y. GEN. BUS. LAW § 1520 (McKinney 2026); NEB. REV. STAT. § 87-1304 (2026). In addition, some state laws provide that personalized content recommendations are addictive features. *E.g.*, CAL. HEALTH & SAFETY CODE §§ 27000.5(a), 27001 (West 2026); N.Y. GEN. BUS. LAW §§ 1500–1508 (McKinney 2026). First Amendment issues related to content moderation regulations are discussed earlier in this report. See *supra* “Content Moderation.”

³¹³ See discussion *supra* note 312; S.C. CODE ANN. §§ 39-80-10 to -80 (2026); VT. STAT. ANN. tit. 9, §§ 2449a–2449j (West 2026).

³¹⁴ CAL. HEALTH & SAFETY CODE §§ 27000–27007 (West 2026).

³¹⁵ *Id.* § 27000.5(a) (“‘Addictive feed’ means an internet website, online service, online application, or mobile application, or a portion thereof, in which multiple pieces of media generated or shared by users are, either concurrently or sequentially, recommended, selected, or prioritized for display to a user based, in whole or in part, on information provided by the user, or otherwise associated with the user or the user’s device, unless [specified conditions are met].”).

³¹⁶ *Id.* §§ 27001, 27002(a). Specifically, notifications are prohibited “between the hours of 12 a.m. and 6 a.m., in the user’s local time zone, and between the hours of 8 a.m. and 3 p.m., from Monday through Friday from September through May in the user’s local time zone.” *Id.* § 27002(a)(1). Both addictive feeds and covered notifications are permitted for minor users when a platform obtains “verifiable parental consent.” *Id.* §§ 27001, 27002(a).

³¹⁷ *Id.* § 27002(b).

³¹⁸ *Id.*

³¹⁹ *Id.* § 27002(b)(5).

³²⁰ UTAH CODE ANN. §§ 13-71-201 to -202 (West 2026).

³²¹ N.Y. GEN. BUS. LAW § 1502 (McKinney 2026).

³²² *NetChoice v. Griffin*, 812 F. Supp. 3d 905, 914 (W.D. Ark. 2025) (quoting ARK. CODE ANN. § 4-88-1502 (2026)), *appeal docketed*, No. 26-1096 (8th Cir. Jan. 16, 2026).

accounts for fourteen- or fifteen-year-olds without parental consent if the platform employs an “addictive feature,” such as infinite scroll, push notifications, like counts, autoplay, or live-streaming.³²³ South Carolina required that platforms “exercise reasonable care in the . . . design and operation of the covered online service including, but not limited to, covered design features, to prevent [certain] harm to minors.”³²⁴

In addition, generally applicable state laws that do not expressly address online platforms can apply to certain design features. Individuals have filed lawsuits alleging that features like infinite scroll, push notifications, and autoplay violate various state tort laws.³²⁵ According to the lawsuits, certain online platforms should be held liable for violating tort laws that generally bar negligently or defectively designed consumer products.³²⁶

The various state laws addressing or potentially applicable to online platform design features—and the allegedly addictive design features themselves—do not all affect speech in the same way. As a result, courts have applied several different First Amendment analyses in cases challenging laws that regulate addictive design features.³²⁷

The first question courts have often addressed in First Amendment challenges to laws regulating design features is whether a particular design feature is expressive at all. Some courts have identified features that, in their view, are not expressive and do not implicate First Amendment rights.³²⁸ When evaluating Arkansas’s prohibition of features that “[d]evelop or sustain an addiction” to a platform, for example, a federal trial court determined that “some [covered] designs or features” did “not implicate platforms’ editorial discretion,” and regulating them “impose[d] little, if any, burden on users’ speech.”³²⁹ The court gave infinite scroll as an example.³³⁰ “[R]eplacing infinite scroll with click to load more or pagination would,” the court reasoned, “still provide users easy access to the same amount of speech as infinite scroll.”³³¹ The court therefore concluded that the Arkansas prohibition was likely constitutional as applied to infinite scroll.³³²

The same court found, however, that other features covered by the Arkansas law were expressive. The court placed “social feedback features”—which allow users to like, share, or comment on a social media post—in that category.³³³ Prohibiting social feedback features “because [they] cause[] addiction in some users burdens the speech of the many other users for whom this

³²³ FLA. STAT. § 501.1736 (2024).

³²⁴ S.C. CODE ANN. § 39-80-20 (2026).

³²⁵ *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 818 (N.D. Cal. 2023); Ruling on Defendants’ Demurrer to Master Complaint and Three Short Form Complaints, *Soc. Media Cases*, No. JCCP 5255 (Cal. Sup. Ct. Oct. 13, 2023). For information about tort law, see CRS In Focus IF11291, *Introduction to Tort Law*, by Andreas Kuersten (2023).

³²⁶ *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d at 818.

³²⁷ *Compare* *NetChoice, LLC v. Bonta*, 152 F.4th 1002, 1014–18 (9th Cir. 2025) (applying strict scrutiny and intermediate scrutiny to various design regulations), *with* *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d at 835–37 (concluding that holding platforms liable for their design of certain features did not restrict the platforms’ speech).

³²⁸ *NetChoice v. Griffin*, 812 F. Supp. 3d 905, 925 (W.D. Ark. 2025), *appeal docketed*, No. 26-1096 (8th Cir. Jan. 16, 2026).

³²⁹ *Id.* at 914, 925.

³³⁰ *Id.* at 925.

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

feedback is not addictive,” the court explained.³³⁴ Based on the application of Arkansas’s design restrictions to these and other features the court considered expressive, the court subjected the law to First Amendment scrutiny.³³⁵ It ultimately found that the law was likely unconstitutional.³³⁶

Courts ruling on First Amendment defenses in state tort suits have likewise concluded that some allegedly addictive design features are expressive while others are not.³³⁷ A federal trial court reviewing tort allegations about a host of platform features determined that several features could be restricted without “requir[ing] that [the platforms] change how or what speech they disseminate.”³³⁸ Holding platforms liable for failing to implement CSAM reporting protocols, for example, did not, in that court’s view, implicate the platforms’ own First Amendment rights.³³⁹ The court found, however, that “the timing and clustering of notifications of [the platforms’ own] content” was “entitled to First Amendment protection.”³⁴⁰ The court determined that the content of the notifications was speech, and it saw “no way to interpret” the plaintiffs’ tort claims “with respect to the frequency of the notifications that would not require [the platforms] to change when and how much they publish speech.”³⁴¹ The court therefore dismissed claims based on the timing and clustering of notifications from the case.³⁴²

When design restrictions do affect expression, courts have applied strict scrutiny to some restrictions and intermediate scrutiny to others.³⁴³ In a case about California’s Protecting Our Kids from Social Media Addiction Act, for example, the Ninth Circuit considered as-applied First Amendment challenges to the provision limiting like counts and the provision requiring that minor accounts default to private mode.³⁴⁴ The court concluded that different standards of scrutiny applied to the two provisions.³⁴⁵ Limiting access to the number of people who have liked a social media post—but not to other information about a post—constituted a restriction of “speech with a particular content,” according to the Ninth Circuit.³⁴⁶ The court therefore applied strict scrutiny and found that California could have adopted a less restrictive regulation.³⁴⁷ California could have, for example, encouraged the use of technology that allows a user to voluntarily filter out like-count information from a post.³⁴⁸ Accordingly, the Ninth Circuit concluded that California’s regulation of like counts likely failed strict scrutiny and violated the First Amendment.³⁴⁹

³³⁴ *Id.*

³³⁵ *Id.* at 926.

³³⁶ *Id.*

³³⁷ *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 835–37 (N.D. Cal. 2023); Ruling on Defendants’ Demurrer to Master Complaint and Three Short Form Complaints at 72–74, Soc. Media Cases, No. JCCP 5255 (Cal. Super. Ct. Oct. 13, 2023).

³³⁸ *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d at 835–37.

³³⁹ *Id.* at 836.

³⁴⁰ *Id.* at 837 (emphasis omitted).

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ See *NetChoice, LLC v. Bonta*, 152 F.4th 1002, 1014–18 (9th Cir. 2025) (applying strict scrutiny to one provision and intermediate scrutiny to another provision of a California law).

³⁴⁴ *Id.* at 1014–18. The distinction between facial and as-applied challenges is discussed *supra* “Facial Challenges.”

³⁴⁵ 152 F.4th at 1014–18.

³⁴⁶ *Id.* at 1016 (quoting *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 564 (2011)).

³⁴⁷ *Id.* at 1016–17.

³⁴⁸ *Id.* at 1017.

³⁴⁹ *Id.*

In the same opinion, the court characterized California’s private mode requirement as content neutral.³⁵⁰ The private mode provision required that platforms assign every minor user an account for which the default mode prohibited other users from viewing or responding to the minor’s content unless the other user’s account was already connected to the minor’s account.³⁵¹ The court held that this requirement restricted speech based on particular speakers because it limited who minor users can communicate with.³⁵² The limitation was, however, “agnostic as to content” in the court’s view: the same speaker-based limitations applied to a post regardless of what any particular post said.³⁵³ The court therefore applied intermediate scrutiny to the private mode requirement.³⁵⁴ Finding that the requirement was sufficiently tailored to the protection of minors’ mental health, the Ninth Circuit held that the provision was likely constitutional.³⁵⁵

In another case, and as discussed earlier,³⁵⁶ the Eleventh Circuit analyzed a Florida law that applied to platforms with “addictive features”³⁵⁷ and similarly held that the feature-based definition was not content based.³⁵⁸ The court therefore applied “the more forgiving intermediate scrutiny” standard when evaluating the law³⁵⁹ and concluded it was likely constitutional.³⁶⁰

A federal trial court evaluating Arkansas’s prohibition of “designs, algorithms, or features that cause a user to” become addicted to a platform declined to decide whether strict or intermediate scrutiny applied.³⁶¹ The provision did not survive either level of scrutiny, the court explained, so it did not need to determine which was most appropriate.³⁶²

Privacy and Related Protections

Some state laws regulate platform design to protect the privacy of minor users, as opposed to prohibiting features a legislature deemed addictive. For example, in addition to the prohibitions on purportedly addictive platform features discussed above,³⁶³ California’s Protecting Our Kids from Social Media Addiction Act includes requirements directed to protecting users’ privacy such as requiring the deletion of information used for age verification.³⁶⁴ Another previously discussed California law—the CAADCA—imposes privacy and related restrictions on platforms that are “likely to be accessed by children.”³⁶⁵ The CAADCA is a comprehensive design code intended to

³⁵⁰ *Id.*

³⁵¹ CAL. HEALTH & SAFETY CODE § 27002(b)(5) (West 2026).

³⁵² *Bonta*, 152 F.4th at 1017.

³⁵³ *Id.*

³⁵⁴ *Id.* at 1017–18.

³⁵⁵ *Id.*

³⁵⁶ *See supra* “Laws Defining Scope of Coverage.”

³⁵⁷ *Comput. & Comm’n Indus. Ass’n v. Uthmeier*, No. 25-11881, 2025 WL 3458571, at *4–5 (11th Cir. Nov. 25, 2025).

³⁵⁸ *Id.*

³⁵⁹ *Id.* at *4.

³⁶⁰ *Id.* at *3.

³⁶¹ *NetChoice v. Griffin*, 812 F. Supp. 3d 905, 924 (W.D. Ark. 2025), *appeal docketed*, No. 26-1096 (8th Cir. Jan. 16, 2026).

³⁶² *Id.*

³⁶³ *See supra* “Addictive Features.”

³⁶⁴ CAL. HEALTH & SAFETY CODE § 27001(b) (West 2026).

³⁶⁵ CAL. CIV. CODE § 1798.99.31(a) (West 2026); *see also supra* “Laws Targeting Particular Harms” (discussing other CAADCA provisions).

“protect the ‘privacy, safety, and well-being of children’ when engaging with online products.”³⁶⁶ Among other protections, the CAADCA limits how platforms use data—for example, by prohibiting the “use [of a child’s] personal information for any reason other than a reason for which that personal information was collected, unless the business can demonstrate a compelling reason that use of the personal information is in the best interests of children.”³⁶⁷ The Act also prohibits the use of “dark patterns to lead or encourage children to provide personal information . . . or to take any action that the business knows, or has reason to know, is materially detrimental to the child’s physical health, mental health, or well-being.”³⁶⁸ As described by the FTC, *dark patterns* are “design practices that trick or manipulate users into making choices they would not otherwise have made and that may cause harm.”³⁶⁹

Following California’s enactment of the CAADCA, other states, including Maryland,³⁷⁰ Nebraska,³⁷¹ South Carolina,³⁷² and Vermont,³⁷³ enacted their own child-focused design codes.³⁷⁴ These laws are not identical to the CAADCA, but they each contain privacy-focused limitations on how platforms may collect and use children’s personal data.³⁷⁵

Other states have also enacted privacy regulations that apply to online platforms. Texas, for example, enacted HB 18, a law regulating certain “digital service provider[s],” including those

³⁶⁶ *Bonta II*, 170 F.4th 744, 751 (9th Cir. 2026) (quoting CAL. CIV. CODE § 1798.99.29 (West 2026)).

³⁶⁷ CAL. CIV. CODE § 1798.99.31(b)(4) (West 2026).

³⁶⁸ *Id.* § 1798.99.31(b)(7). California law defined a *dark pattern* as “a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decisionmaking, or choice.” *Id.* § 1798.140(1).

³⁶⁹ FED. TRADE COMM’N, STAFF REPORT, BRINGING DARK PATTERNS TO LIGHT 2 (2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%202019.14.2022%20-%20FINAL.pdf [<https://perma.cc/QWP7-4N3H>]. For more information about dark patterns, see CRS In Focus IF12246, *What Hides in the Shadows: Deceptive Design of Dark Patterns*, by Ling Zhu and Laurie Harris (2022).

³⁷⁰ MD. CODE ANN. COM. LAW §§ 14-4801 to -4813 (West 2026).

³⁷¹ NEB. REV. STAT. §§ 87-1301 to -1309 (2026).

³⁷² S.C. CODE ANN. §§ 39-80-10 to -80 (2026).

³⁷³ VT. STAT. ANN. tit. 9, §§ 2449a–2449j (2026).

³⁷⁴ New Jersey has enacted a child-focused design code that is scheduled to take effect in 2027. Assemb. 4015, 222d Leg., Reg. Sess. (N.J. 2026) (enacted). In addition to these design codes, many states have general data privacy laws that offer protections to consumers whose data may be collected by online platforms. *E.g.*, CAL. CIV. CODE §§ 1798.100–1798.199.100 (West 2026). For analysis of general data privacy laws, see CRS Report R48667, *Preemption and Privacy Law*, by Chris D. Linebaugh (2025); CRS Report R45631, *Data Protection Law: An Overview*, by Steve P. Mulligan and Chris D. Linebaugh (2019); CRS Legal Sidebar LSB11161, *The American Privacy Rights Act*, by Chris D. Linebaugh et al. (2024).

³⁷⁵ See MD. CODE ANN. COM. LAW § 14-4806(a)(1) (West 2026) (“A covered entity that provides an online product that is accessed or reasonably likely to be accessed by children may not . . . [p]rocess the personal data of a child in a way that is inconsistent with the best interests of children reasonably likely to access the online product[.]”); *id.* § 14-4806(a)(4) (“A covered entity that provides an online product that is accessed or reasonably likely to be accessed by children may not . . . [p]rocess the personal data of a child end user for any reason other than a reason for which that personal data was collected”); S.C. CODE ANN. § 39-80-40(A) (2026) (“Covered online services shall only collect, use, or share the minimum amount of a minor’s personal data necessary to provide the specific elements of the covered online service with which a minor has knowingly engaged. Such personal data may not be used for reasons other than those for which it was collected. Minors’ personal data collected for age verification or estimation cannot be used for other purposes and must be deleted after use.”); VT. STAT. ANN. tit. 9, § 2449f(a) (2026) (“A covered business shall not . . . collect, sell, share, or retain any personal data of a covered minor that is not necessary to provide an online service, product, or feature with which the covered minor is actively and knowingly engaged[.]”); NEB. REV. STAT. § 87-1305(1) (2026) (“A covered online service shall only collect and use the minimum amount of a covered minor’s personal data necessary to provide the specific elements of an online service with which the covered minor has knowingly engaged. Such personal data shall not be used for reasons other than those for which it was collected.”).

that “allow[] users to socially interact with other users.”³⁷⁶ Texas’s HB 18 limits when these platforms may collect and use data about minor users.³⁷⁷

Limiting how a company may use data it has collected—including customers’ personal information—can raise First Amendment issues.³⁷⁸ “An individual’s right to speak is implicated,” the Supreme Court has explained, “when information he or she possesses is subjected to ‘restraints on the way in which the information might be used’ or disseminated.”³⁷⁹ Based on that reasoning, a number of lower courts have held that data restrictions, even privacy-enhancing restrictions, are subject to First Amendment scrutiny.³⁸⁰ For instance, a federal trial court hearing a challenge to data use and dark patterns restrictions in Maryland’s Age-Appropriate Design Code Act determined that the challenger in that case adequately alleged that the privacy restrictions implicated First Amendment rights.³⁸¹

The specific First Amendment scrutiny that courts have applied to data use restrictions has varied, in part because there is some ambiguity in the relevant precedent about what level of scrutiny to apply to restrictions on the use of information. In 2011, the Supreme Court invalidated a Vermont law that “enact[ed] content- and speaker-based restrictions on the sale, disclosure, and use of” data about the prescribing history of specific physicians without determining precisely which level of scrutiny the First Amendment required.³⁸² Although the Court made clear that it was applying “heightened judicial scrutiny,” it saw no need to further specify.³⁸³ It held instead that the Vermont law was invalid regardless of “whether a special commercial speech inquiry”—that is, *Central Hudson* intermediate scrutiny³⁸⁴—“or a stricter form of judicial scrutiny is applied.”³⁸⁵

³⁷⁶ TEX. BUS. & COM. CODE ANN. § 509.002(a) (West 2026).

³⁷⁷ *Id.* § 509.052.

³⁷⁸ *See, e.g., U.S. W., Inc. v. FCC*, 182 F.3d 1224, 1231–32 (10th Cir. 1999) (holding that a regulation restricting the use and disclosure of and access to customer proprietary network information affects speech); *ACA Connects v. Frey*, 471 F. Supp. 3d 318, 327 (D. Me. 2020) (“The Privacy Statute restricts ISPs’ ability to use, disclose, sell, and provide access to customers’ personal information. . . . I, therefore, proceed from the presumption that Plaintiffs’ marketing of customer data, like the prescriber-identifying data in *Sorrell*, is sheltered by the First Amendment.”); *Boelter v. Advance Mag. Publishers Inc.*, 210 F. Supp. 3d 579, 597 (S.D.N.Y. 2016) (“Whether the sale of data to third parties for targeted solicitation of consumers is commercial speech appears to be an open question in the Second Circuit. We conclude . . . that the speech at issue warrants qualified constitutional protection.” (citation omitted)); *Boelter v. Hearst Commc’ns, Inc.*, 192 F. Supp. 3d 427, 445 (S.D.N.Y. 2016) (holding that a law regulates speech because it “restricts the sellers of certain products from disclosing the identity of individuals who purchase those products”).

³⁷⁹ *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 568 (2011) (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32 (1984)).

³⁸⁰ *See, e.g., Advance Mag. Publishers*, 210 F. Supp. 3d at 597 (“The disclosure of [customer information about magazine subscriptions] to data miners and the sale of [the same information] to organizations that use it for solicitation purposes is speech ‘related solely to the economic interests of the speaker and its audience.’” (quoting *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n* 447 U.S. 557, 561 (1980))).

³⁸¹ *NetChoice v. Brown*, No. 25-0322, 2025 WL 3267786, at *15 (D. Md. Nov. 24, 2025). The court’s decision, which addressed a motion to dismiss, came at an early stage in the case. *Id.* at *1. As a result, the court did not think it was necessary to “determine which specific degree of First Amendment scrutiny applies.” *Id.* at *14. For the purpose of deciding a motion to dismiss, the court deemed it sufficient to determine “whether NetChoice has sufficiently alleged that [Maryland’s law] at least burdens protected speech or expression such that First Amendment scrutiny applies.” *Id.*

³⁸² *Sorrell*, 564 U.S. at 563–64, 580.

³⁸³ *Id.* at 565, 571.

³⁸⁴ *See supra* “Laws Targeting Advertisements and Commercial Speech.”

³⁸⁵ *Sorrell*, 564 U.S. at 571.

In some cases involving state laws that restrict data use by online platforms, courts have applied strict scrutiny after determining that a restriction on data use is content based.³⁸⁶ For example, the Ninth Circuit applied strict scrutiny to a law that prohibited “only a single category” of online services from “disseminat[ing] . . . one type of [personal information]: ‘date of birth or age information.’”³⁸⁷ The court ultimately concluded that the law was unconstitutional.³⁸⁸

When data use restrictions are content neutral or affect only commercial speech, however, other courts have applied intermediate scrutiny.³⁸⁹ A federal trial court reviewed and upheld Illinois’s Biometric Information Privacy Act (BIPA) under intermediate scrutiny,³⁹⁰ determining that the categories of information regulated under BIPA—such as “biometric identifier[s]” and “biometric information”—did not “relate to the communicative content of th[e] information.”³⁹¹ The court concluded that BIPA survived intermediate scrutiny because Illinois had a substantial interest in “protecting [consumers’] privacy in and control over their biometric data” and “allowing a company to collect . . . biometric data only after the consumer can make an informed choice” directly advances that interest.³⁹² In other cases, courts have invalidated data use restrictions under intermediate scrutiny when they are not sufficiently tailored or have only speculative connections to substantial state interests.³⁹³

In addition to strict and intermediate scrutiny, the U.S. District Court for the District of New Jersey has employed a distinct balancing test to evaluate First Amendment challenges to privacy regulations. In its view, “the Supreme Court has outlined three specific factors that a court must consider in balancing the right of privacy against the right of free speech.”³⁹⁴ Those factors are “whether the information is lawfully obtained and is of public significance”; “whether the law in question serves ‘a need to further a state interest of the highest order’”; and “whether the statute serves ‘the significant interests’ which the state purports to advance and is not underinclusive.”³⁹⁵ Applying this standard, the court denied a motion to dismiss, arguing that the law at issue was not unconstitutional on its face.³⁹⁶

Some courts have held that certain privacy restrictions that focus only on collecting information—as opposed to selling, sharing, or otherwise communicating the information—are

³⁸⁶ See, e.g., *Jackson v. Whitepages, Inc.*, 798 F. Supp. 3d 583, 596 (N.D. W. Va. 2025), *appeal docketed*, No. 25-2122 (4th Cir. Sep. 19, 2025).

³⁸⁷ *IMDb.com Inc. v. Becerra*, 962 F.3d 1111, 1120 (9th Cir. 2020) (quoting CAL. CIV. CODE § 1798.83.5(b) (West 2024)).

³⁸⁸ *Id.* at 1127.

³⁸⁹ See *Nat’l Cable & Telecomms. Ass’n v. FCC*, 555 F.3d 996, 1001–02 (D.C. Cir. 2009); *Sosa v. Onfido, Inc.*, 600 F. Supp. 3d 859, 879–84 (N.D. Ill. 2022); *Boelter v. Hearst Commc’ns, Inc.*, 192 F. Supp. 3d 427, 447–51 (S.D.N.Y. 2016).

³⁹⁰ *Sosa*, 600 F. Supp. 3d at 879–84.

³⁹¹ *Id.* at 880.

³⁹² *Id.* at 882–83.

³⁹³ *U.S. W., Inc. v. FCC*, 182 F.3d 1224, 1231–39 (10th Cir. 1999) (applying intermediate scrutiny to a regulation restricting the use and disclosure of customer proprietary network information collected by telecommunications carriers and holding that the restrictions violate the First Amendment); *DoorDash, Inc. v. City of New York*, 789 F. Supp. 3d 337, 356–59 (S.D.N.Y. 2025).

³⁹⁴ *Atlas Data Priv. Corp. v. We Inform, LLC*, 758 F. Supp. 3d 322, 336 (D.N.J. 2024), *appeal docketed*, No. 25-1555 (3d Cir. Mar. 31, 2025).

³⁹⁵ *Id.* at 336–37 (quoting *Fla. Star v. B.J.F.*, 491 U.S. 524, 536–40 (1989)).

³⁹⁶ *Id.* at 341–42.

not subject to heightened First Amendment scrutiny.³⁹⁷ A federal district court deciding a challenge to Texas’s HB 18 reasoned that the challengers did not show how “prohibiting the collection of [personal information] and geolocation data” placed “any burden on speech.”³⁹⁸ The Seventh Circuit drew a similar conclusion about the federal Driver’s Privacy Protection Act (DPPA).³⁹⁹ That court treated the DPPA’s “prohibition on knowingly obtaining an individual’s personal information from motor vehicle records” as subject to “rational basis review” because it was “a limitation only on *access* to information.”⁴⁰⁰ Both courts upheld the provisions that did not burden speech against First Amendment challenges.⁴⁰¹

Finally, as discussed previously, the Ninth Circuit held that the CAADCA’s data use and dark patterns restrictions were invalid because the provisions were unconstitutionally vague.⁴⁰²

Considerations for Congress

In recent Congresses, some Members have introduced bills that propose design regulations on online platforms.⁴⁰³ The KIDS Act from the 119th Congress, for example, would require that covered platforms provide minors with certain “easy-to-use safeguards,” apply certain default settings to minors’ accounts, and provide certain tools for parents of minors.⁴⁰⁴ Other proposals have addressed content moderation,⁴⁰⁵ privacy protections,⁴⁰⁶ or prohibitions of dark patterns.⁴⁰⁷

As discussed, courts have subjected laws that regulate platform design features to different levels of First Amendment scrutiny depending on the features at issue and the way the regulation affects speech. Design feature regulations are most likely to be upheld against a First Amendment challenge when they do not restrict expressive choices.⁴⁰⁸ One court concluded that prohibiting infinite scroll fell into this category because “replacing infinite scroll with click to load more or

³⁹⁷ In other cases, courts have held that some restrictions on collecting information can still raise First Amendment issues. Courts have determined, for example, that certain limits on accessing information can hamper the creation of speech and applied First Amendment scrutiny. *W. Watersheds Project v. Michael*, 869 F.3d 1189, 1195–96 (10th Cir. 2017) (“We conclude that plaintiffs’ collection of resource data constitutes the protected creation of speech.”); *see also Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (“[T]he Constitution protects the right to receive information and ideas.”).

³⁹⁸ *Computer & Commc’ns Indus. Ass’n v. Paxton*, 747 F. Supp. 3d 1011, 1035 (W.D. Tex. 2024), *aff’d on other grounds*, No. 24-50721, 2026 WL 2130729 (5th Cir. July 24, 2026).

³⁹⁹ 18 U.S.C. §§ 2721–2725; *Dahlstrom v. Sun-Times Media, LLC*, 777 F.3d 937, 949 (7th Cir. 2015).

⁴⁰⁰ *Dahlstrom*, 777 F.3d at 947–49. Under the rational basis standard, a law is constitutional so long as there is a rational relationship between a legitimate legislative purpose and the means employed to achieve that purpose. *N.Y. State Rest. Ass’n v. N.Y.C. Bd. of Health*, 556 F.3d 114, 134 (2d Cir. 2009).

⁴⁰¹ *Dahlstrom*, 777 F.3d at 949; *Paxton*, 747 F. Supp. 3d at 1036.

⁴⁰² *Bonta II*, 170 F.4th 744, 764–67 (9th Cir. 2026); *see supra* “Laws Targeting Particular Content.”

⁴⁰³ *See, e.g.*, KIDS Act, H.R. 7757, 119th Cong. § 214 (2026).

⁴⁰⁴ *Id.*

⁴⁰⁵ *See* Disincentivizing Internet Service Censorship of Online Users and Restrictions on Speech and Expression (DISCOURSE) Act, S. 921, 118th Cong. (2023); Nudging Users to Drive Good Experiences on Social Media (NUDGE) Act, S. 3608, 117th Cong. (2022).

⁴⁰⁶ Children and Teens’ Online Privacy Protection Act, S. 836, 119th Cong. (2026).

⁴⁰⁷ Kids Online Safety Act, S. 1748, 119th Cong. (2026). For more information about the Kids Online Safety Act, *see* CRS In Focus IF12730, *Kids Online Safety Act*, by Clare Y. Cho (2026).

⁴⁰⁸ *NetChoice v. Griffin*, 812 F. Supp. 3d 905, 920 (W.D. Ark. 2025) (“[T]he Court can conceive of some applications of § 1502 that are likely constitutional because they involve platforms’ non-expressive conduct and impose minimal incidental burdens on speech. Such applications may include: appearance-altering filters; data collection practices; display features unrelated to the ordering of content, e.g., infinite scroll, autoplay; and difficult to access parental controls or ‘delete account’ buttons.”).

pagination would still provide users easy access to the same amount of speech as infinite scroll.”⁴⁰⁹

Assuming they implicate the First Amendment, design restrictions could be reviewed under intermediate scrutiny if they are content neutral or restrict only commercial speech.⁴¹⁰ For example, the Ninth Circuit applied intermediate scrutiny and upheld California’s requirement that minor accounts default to a private mode with limits on who the minor can communicate with.⁴¹¹

Restrictions on design features are comparatively less likely to be upheld when they restrict expression and make content-based distinctions.⁴¹² The Ninth Circuit held that California’s restriction on like counts fell into this category and held that the law was likely unconstitutional under strict scrutiny.⁴¹³

Congress might consider ways to focus regulations on particular design elements that are less likely to burden speech than others. If design restrictions make content-based distinctions, Congress might consider ways to tailor the restrictions to avoid unnecessarily burdening speech and develop a legislative record showing how the law is narrowly tailored.⁴¹⁴

Laws Requiring Disclosures

Some states have adopted transparency measures, requiring online platforms to disclose their terms of service or practices relating to how they moderate user content.⁴¹⁵ Some laws have required platforms to share information about algorithmic recommendation systems⁴¹⁶ or the collection and use of minors’ personal data.⁴¹⁷ Some disclosure requirements overlap with laws targeting how companies design their platforms.⁴¹⁸ An Arkansas law, for example, required social media platforms to develop a “dashboard to allow a parent of a minor user to view and understand his or her child’s use habits.”⁴¹⁹ Some of these disclosures may require value judgments: for example, a Minnesota law required covered social media platforms to explain how

⁴⁰⁹ *Id.* at 925.

⁴¹⁰ *See* NetChoice, LLC v. Bonta, 152 F.4th 1002, 1017 (9th Cir. 2025) (“The private-mode default is agnostic as to content and therefore need only survive intermediate scrutiny.”).

⁴¹¹ *Id.*

⁴¹² *Id.* at 1016 (“Like counts are ‘speech with a particular content.’ The Act prohibits platforms from describing posts based on ‘the idea or message expressed’ by the description. (first quoting *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 564 (2011), and then *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015))).

⁴¹³ *Id.* at 1017.

⁴¹⁴ *Cf. id.* at 1017 (“[California’s private mode requirement] is not underinclusive enough to raise ‘doubts about whether the government is in fact pursuing’ the asserted interest. . . . Neither is the provision so overinclusive to make it ‘substantially broader than necessary’ to achieve California’s interest.” (first quoting *Williams-Yulee v. Fla. B.*, 575 U.S. 433, 448 (2015), and then *TikTok Inc. v. Garland*, 604 U.S. 56, 77 (2025))).

⁴¹⁵ *E.g.*, CAL. BUS. & PROF. CODE §§ 22676–22677 (West 2026); FLA. STAT. § 501.2041(2)(a), (c) (2025); N.Y. GEN. BUS. LAW § 1101 (McKinney 2026); TEX. BUS. & COM. CODE ANN. §§ 120.051–.053 (West 2025).

⁴¹⁶ *E.g.*, VT. STAT. ANN. tit. 9, § 2449e (2025); *see also, e.g.*, X.AI LLC v. Bonta, No. 25-12295, 2026 WL 626926, at *1 (C.D. Cal. Mar. 4, 2026) (denying motion for a preliminary injunction against a California law requiring generative artificial intelligence systems to disclose training data), *appeal docketed*, No. 26-1591 (9th Cir. Mar. 17, 2026).

⁴¹⁷ *E.g.*, UTAH CODE ANN. § 13-71-202(3) (West 2024).

⁴¹⁸ *Supra* “Laws Targeting Platform Design.”

⁴¹⁹ ARK. CODE ANN. § 4-88-1402(4)(A) (2026).

they limit “excessive account interactions.”⁴²⁰ As discussed above,⁴²¹ the CAADCA required covered businesses to report on whether their product could expose “children to harmful, or potentially harmful, content.”⁴²²

A few states have required covered platforms to display warning labels about potential harmful effects of social media use.⁴²³ A New York law required that before “a covered operator” may “provide an addictive feature” (a defined term), it must display the following warning: “The Surgeon General has warned that while social media may have benefits for some young users, excessive use may be associated with significant mental health harms.”⁴²⁴ California and Colorado required warnings to be displayed to minor users who have spent certain amounts of time on the platform.⁴²⁵ Texas imposed four different notice requirements on certain commercial websites that distribute “sexual material harmful to minors”: three “health” warnings about “pornography” and a reference to a mental health hotline.⁴²⁶

Tackling a different concern related to content moderation, Florida and Texas enacted laws requiring social media platforms to provide notice before removing a user’s content, including explaining why the content was removed.⁴²⁷

First Amendment Background: Compelled Speech and Commercial Disclosure Requirements

Under the First Amendment, when the government requires a private entity to disclose certain information or make a specific statement, that is known as *compelled speech*.⁴²⁸ While disclosure requirements are sometimes viewed as less speech-restrictive than prohibitions on speech,⁴²⁹ the First Amendment nonetheless limits the government’s ability to compel speech.⁴³⁰ Not all laws that compel speech are evaluated in the same way, however.

As a general rule, and as previously discussed, the Supreme Court has said that a law that compels “individuals to speak a particular message” is content based and will likely trigger strict

⁴²⁰ MINN. STAT. § 325M.33(1) (2025) (emphasis added). *See also* discussion *supra* notes 211 to 215 (New York law relating to hateful conduct).

⁴²¹ *Supra* text accompanying notes 250 to 254.

⁴²² CAL. CIV. CODE § 1798.99.31(1)(B) (West 2026).

⁴²³ CAL. HEALTH & SAFETY CODE § 28002 (West 2026); COLO. REV. STAT. § 6-1-1601 (2026); MINN. STAT. § 325M.335 (2025); N.Y. GEN. BUS. LAW § 1521 (McKinney 2026).

⁴²⁴ N.Y. GEN. BUS. LAW § 1521 (McKinney 2026). An addictive feature includes (in part) a feed in which user-generated content is recommended based on information associated with the user (with certain exceptions), *id.* § 1500(1), as well as autoplay and infinite scroll, *id.* § 1520.

⁴²⁵ CAL. HEALTH & SAFETY CODE § 28002 (West 2026) (requiring defined text similar to the New York warning language); COLO. REV. STAT. § 6-1-1601 (2026) (requiring the provision of information “that helps the user understand the impact of social media on the developing brain and the mental and physical health of youth users”).

⁴²⁶ TEX. CIV. PRAC. & REM. CODE ANN. § 129B.004 (West 2026).

⁴²⁷ FLA. STAT. § 501.2041(2)(d), (3) (2025); TEX. BUS. & COM. CODE ANN. § 120.103 (West 2025).

⁴²⁸ *See, e.g.,* Brannon et al., CRS In Focus IF12388, *First Amendment Limitations on Disclosure Requirements*, *supra* note 200; CRS Report R45700, *Assessing Commercial Disclosure Requirements under the First Amendment*, by Valerie C. Brannon (2019).

⁴²⁹ *Buckley v. Valeo*, 424 U.S. 1, 68 (1976) (per curiam).

⁴³⁰ *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”).

scrutiny.⁴³¹ Strict scrutiny requires the government to show its law is “narrowly tailored to serve compelling state interests.”⁴³² In this context, narrow tailoring calls for the “least restrictive means,” ensuring that “speech is restricted no further than necessary.”⁴³³ The government generally “may not compel a person to speak its own preferred messages.”⁴³⁴

If the law involves commercial speech—that is, speech that “does ‘no more than propose a commercial transaction’”⁴³⁵ or is “related solely to the economic interests of the speaker and its audience”⁴³⁶—a disclosure requirement may receive intermediate scrutiny instead.⁴³⁷ Lower courts sometimes look to a series of factors to determine whether speech is commercial: “(1) whether the speech is concededly an advertisement, (2) whether the speech references a specific product, and (3) whether the speaker has an economic motivation for the speech.”⁴³⁸ As mentioned above,⁴³⁹ the *Central Hudson* intermediate scrutiny standard requires the government to show the law “directly advances” a “substantial” government interest and “is not more extensive than is necessary to serve that interest.”⁴⁴⁰

Certain commercial disclosure requirements are reviewed under a more lenient standard.⁴⁴¹ This so-called *Zauderer* standard applies to laws that compel “purely factual and uncontroversial information” about a speaker’s goods or services.⁴⁴² A disclosure is “purely factual” if it is literally true and not misleading.⁴⁴³ Case law is slightly less clear on how to determine whether a disclosure is “uncontroversial.”⁴⁴⁴ One federal appeals court asserted that it needed to look to the “effect on the speaker”—whether it required the speaker to convey an unwanted message—and perform “an objective evaluation of ‘controversy’” that looks to the scientific evidence

⁴³¹ *Nat’l Inst. of Family & Life Advoc. v. Becerra*, 585 U.S. 755, 766 (2018); *supra* “Laws Targeting Expression or Content.” In some cases, the Supreme Court has held that compelled speech is impermissible without specifying the level of scrutiny, suggesting the government cannot justify the requirement. See CRS Legal Sidebar LSB11000, *303 Creative v. Elenis: Supreme Court Recognizes Free Speech Exception to Nondiscrimination Law*, by Valerie C. Brannon (2023). One appeals court explained at least one of these cases by saying it “dealt not with disclosures about the *terms* under which the service was available, but instead with compelling those services.” *R J Reynolds Tobacco Co. v. FDA*, 96 F.4th 863, 875 n.33 (5th Cir. 2024) (discussing *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023)).

⁴³² *Nat’l Inst. of Family & Life Advoc.*, 585 U.S. at 766 (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)).

⁴³³ *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004).

⁴³⁴ *303 Creative LLC*, 600 U.S. at 586.

⁴³⁵ *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 762 (1976) (quoting *Pitt. Press Co. v. Pitt. Comm’n on Hum. Rels.*, 413 U.S. 376, 385 (1973)).

⁴³⁶ *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 561 (1980).

⁴³⁷ See, e.g., *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 249 (2010) (considering whether *Central Hudson* governs analysis of commercial disclosure requirement).

⁴³⁸ *Ass’n of Home Appliance Mfrs. v. Weiser*, No. 25-CV-02417, 2025 WL 4642378, at *4 (D. Colo. Dec. 19, 2025) (citing *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66–67 (1983)).

⁴³⁹ *Supra* “Laws Targeting Advertisements and Commercial Speech.”

⁴⁴⁰ *Central Hudson*, 447 U.S. at 566.

⁴⁴¹ *Nat’l Inst. of Family & Life Advoc. v. Becerra*, 585 U.S. 755, 768 (2018).

⁴⁴² *Zauderer v. Off. of Disciplinary Couns.*, 471 U.S. 626, 651 (1985). As discussed in Brannon, CRS Report R45700, *Assessing Commercial Disclosure Requirements under the First Amendment*, *supra* note 428, courts have disagreed on when, exactly, the *Zauderer* standard applies: for instance, whether it extends beyond advertising or product labeling, or applies only when the government cites certain interests.

⁴⁴³ E.g., *CTIA - The Wireless Ass’n v. City of Berkeley*, 928 F.3d 832, 847 (9th Cir. 2019).

⁴⁴⁴ Compare, e.g., *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 478 (9th Cir. 2022) (“Given this robust disagreement by reputable scientific sources, the court did not abuse its discretion in concluding that the warning is controversial.”), with e.g., *Am. Meat Inst. v. U.S. Dep’t of Agric.*, 760 F.3d 18, 27 (D.C. Cir. 2014) (suggesting “dispute about simple factual accuracy” is insufficient to create controversy”), and e.g., *Chamber of Com. of U.S. v. U.S. SEC.*, 85 F.4th 760, 770 (5th Cir. 2023) (looking to whether a topic engenders controversy).

underlying the disclosure.⁴⁴⁵ If *Zauderer* applies, the requirement will be constitutional if it is “reasonably related” to a sufficient state interest⁴⁴⁶ and “neither unjustified nor unduly burdensome.”⁴⁴⁷ A number of courts have considered whether states’ online platform transparency provisions can be evaluated and upheld under *Zauderer* review.

Laws Requiring Purely Factual and Uncontroversial Commercial Disclosures

The first question in determining what level of constitutional scrutiny governs a disclosure provision might be whether the speech can be characterized as commercial. If so, the law might be reviewed under *Central Hudson* intermediate scrutiny or under *Zauderer*, rather than being subject to strict scrutiny.⁴⁴⁸ Some of the judicial opinions evaluating transparency requirements for online platforms have asserted without discussion that these statutes involve commercial speech, potentially based on the way the parties framed their arguments.⁴⁴⁹

Further, citing *Zauderer*’s lowered standard for review of purely factual and uncontroversial commercial disclosures, some courts have rejected First Amendment challenges to laws that require social media companies to share information about their existing terms of service.⁴⁵⁰ The Second Circuit said in one case that even if social media companies’ content moderation policies “might be controversial, the fact that *they are what they are* is not.”⁴⁵¹ The court said if a state disclosure law was “truly agnostic about the substance of the content moderation policy,” in the sense that a company was “not required to adopt any particular policy or to address any particular category of speech,” it should be upheld under *Zauderer*.⁴⁵²

An Eleventh Circuit ruling provides another example.⁴⁵³ The appeals court considered portions of a Florida law that required online platforms to publish information about their content moderation standards, terms of service, and the views of a user’s content.⁴⁵⁴ The court concluded *Zauderer*

⁴⁴⁵ Nat’l Ass’n of Wheat Growers v. Bonta, 85 F.4th 1263, 1277 (9th Cir. 2023); see also, e.g., *CTIA - The Wireless Ass’n*, 928 F.3d at 848 (concluding a required disclosure is uncontroversial because “[i]t does not force cell phone retailers to take sides in a heated political controversy”).

⁴⁴⁶ *Zauderer*, 471 U.S. at 651. As discussed in Brannon, CRS Report R45700, *Assessing Commercial Disclosure Requirements under the First Amendment*, supra note 428, courts have disagreed about what qualifies as a sufficient state interest: whether *Zauderer* only applies if the state is seeking to address consumer confusion or deception, or whether the *Zauderer* framework can apply in other contexts, as well. For an example of a judicial opinion discussing this issue, see *CTIA - The Wireless Ass’n*, 928 F.3d at 843–44.

⁴⁴⁷ Nat’l Inst. of Family & Life Advoc. v. Becerra, 585 U.S. 755, 776 (2018). Cf., e.g., *Uber Techs., Inc. v. City of Seattle*, 168 F.4th 1202, 1217 (9th Cir. 2026) (“[T]he notice requirement can be satisfied by a single webpage and is therefore not unduly burdensome.”).

⁴⁴⁸ E.g., *Nat’l Ass’n of Wheat Growers*, 85 F.4th at 1275 (discussing these “two levels of scrutiny governing compelled commercial speech”).

⁴⁴⁹ See, e.g., *NetChoice, LLC v. Att’y Gen.*, 34 F.4th 1196, 1230 (11th Cir. 2022) (saying *Zauderer* applies, observing that the state is targeting “consumers who engage in commercial transactions with platforms by providing them with a user and data for advertising in exchange for access to a forum”), *vacated and remanded sub nom.*, *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024).

⁴⁵⁰ *Id.* at 1227; *NetChoice, L.L.C. v. Paxton*, 49 F.4th 439, 485 (5th Cir. 2022), *vacated and remanded sub nom.*, *Moody*, 603 U.S. at 707; *X Corp. v. Bonta*, No. 2:23-CV-01939, 2023 WL 8948286, at *2 (E.D. Ca. Dec. 28, 2023), *rev’d and remanded on other grounds*, 116 F.4th 888 (9th Cir. 2024).

⁴⁵¹ *Volokh v. James*, 148 F.4th 71, 90 (2d Cir. 2025), *accepting certified question*, 267 N.E.3d 1245 (N.Y. 2025), *answering certified question*, No. 58, 2026 WL 1790976 (N.Y. June 23, 2026).

⁴⁵² *Id.* at 91.

⁴⁵³ *Att’y Gen.*, 34 F.4th at 1223.

⁴⁵⁴ *Id.* at 1227; FLA. STAT. § 501.2041(2)(a), (c), (e) (2025).

review applied to these disclosures of “‘purely factual and uncontroversial information’ about their conduct toward their users and the ‘terms under which [their] services will be available.’”⁴⁵⁵ Applying that standard, the Eleventh Circuit held that the state likely had a “legitimate” interest “in ensuring that users—consumers who engage in commercial transactions with platforms by providing them with a user and data for advertising in exchange for access to a forum—are fully informed about the terms of that transaction and aren’t misled about platforms’ content-moderation policies.”⁴⁵⁶ Further, the court concluded there was not a substantial likelihood the requirements were “unduly burdensome or likely to chill platforms’ speech,” and so the court rejected the constitutional challenge.⁴⁵⁷

The Eleventh Circuit said the law’s challengers likely would be able to show that other portions of the law were “unduly burdensome and likely to chill platforms’ protected speech,” however.⁴⁵⁸ In addition to the disclosures outlined above, the Florida law also required platforms to “provide notice and a detailed justification” to users before restricting their content or deplatforming the user.⁴⁵⁹ The appeals court observed that platforms “remove millions of posts per day” and “a platform could be slapped with millions, or even billions, of dollars in statutory damages if a Florida court were to determine that it didn’t provide sufficiently ‘thorough’ explanations when removing posts.”⁴⁶⁰ This “massive potential liability” was likely to violate the platforms’ First Amendment rights even under *Zauderer* review, in the court’s opinion.⁴⁶¹

The Eleventh Circuit opinion was vacated by the Supreme Court in *Moody* “for reasons separate from the First Amendment merits.”⁴⁶² Nonetheless, the Court said the Eleventh Circuit’s approach to the First Amendment analysis was similar to how it viewed the merits of the case and suggested that *Zauderer* would apply to “the individualized-explanation provisions.”⁴⁶³

In another case, a federal trial court concluded an Arkansas provision was unduly burdensome under *Zauderer*.⁴⁶⁴ A trade group raised a compelled speech challenge to the law requiring sites to create and present an online dashboard for parents to view minor children’s use habits.⁴⁶⁵ As the court described it, the dashboard provision ultimately required platforms to “(1) collect age information from everyone who visits a covered platform to identify minors; and (2) collect and store identity information for every minor who visits a platform to track their ‘use habits,’ connect them with their parents, and effectuate ‘tools for a parent to restrict his or her minor child’s

⁴⁵⁵ *Att’y Gen.*, 34 F.4th at 1227 (quoting *Zauderer v. Off. of Disciplinary Couns.*, 471 U.S. 626, 651 (1985)).

⁴⁵⁶ *Id.* at 1230.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*; FLA. STAT. § 501.2041(2)(d), (3) (2025).

⁴⁶⁰ *Att’y Gen.*, 34 F.4th at 1230–31.

⁴⁶¹ *Id.*

⁴⁶² *Moody v. NetChoice, LLC*, 603 U.S. 707, 717 (2024). At the same time, the Supreme Court was not specifically considering most of the Florida law’s disclosure provisions, apart from the individualized-explanation provisions. See *Moody v. NetChoice, LLC*, 144 S. Ct. 478 (2023) (mem.) (granting the petition for writ of certiorari, limited to consideration of certain provisions of the challenged state laws).

⁴⁶³ *Moody*, 603 U.S. at 725, 727.

⁴⁶⁴ *NetChoice v. Griffin*, 831 F. Supp. 3d 816, 834 (W.D. Ark. 2026).

⁴⁶⁵ *Id.*

access.”⁴⁶⁶ The court held that these requirements were “unduly burdensome and . . . likely to chill platforms’ dissemination of speech to or from anyone who is not an account holder.”⁴⁶⁷

Laws Requiring Other Types of Disclosures

Unless a disclosure requirement qualifies for *Zauderer* review, it is likely to receive heightened scrutiny, either under *Central Hudson* intermediate scrutiny or under strict scrutiny.⁴⁶⁸ As the Supreme Court has said, generally, “the government may not compel a person to speak its own preferred messages.”⁴⁶⁹

Whether a disclosure requirement involved commercial speech⁴⁷⁰ was explored in a challenge to a California law requiring social media companies to submit terms of service reports to the state.⁴⁷¹ The trial court concluded a company’s terms of service “bear all of the hallmarks of commercial speech.”⁴⁷² Among other factors, the court observed that the terms were “directed to potential consumers . . . and communicate important information” about the company’s product or service.⁴⁷³ The court also said there was “an economic motivation” for companies to communicate this information.⁴⁷⁴

On appeal, the Ninth Circuit disagreed with this analysis.⁴⁷⁵ The Ninth Circuit emphasized that the state law not only required companies to report their current terms of service and any changes, but also required reports of policies and actions related to specific categories of content such as “hate speech,” “disinformation,” and “harassment.”⁴⁷⁶ The appeals court said these content category reports were not commercial speech.⁴⁷⁷ The reports did not merely communicate “the terms of an actual or potential transaction”; they also “express a view *about* those terms by conveying whether a company believes certain categories should be defined and proscribed.”⁴⁷⁸ Requiring reporting about the company’s “opinions about and reasons for” their policies was “different in character and kind” from requiring the disclosure of existing policies, in the court’s view.⁴⁷⁹ Accordingly, the court said the law compelled non-commercial speech, triggering strict

⁴⁶⁶ *Id.* (quoting ARK. CODE ANN. § 4-88-1402(4)(A) (2026)).

⁴⁶⁷ *Id.* The court assumed without deciding that *Zauderer* applied, since the provision “fails even this less stringent standard.” *Id.* at 833–34.

⁴⁶⁸ See, e.g., *Volokh v. James*, 148 F.4th 71, 93 (2d Cir. 2025), *accepting certified question*, 267 N.E.3d 1245 (N.Y. 2025), *answering certified question*, No. 58, 2026 WL 1790976 (N.Y. June 23, 2026).

⁴⁶⁹ 303 Creative LLC v. Elenis, 600 U.S. 570, 586 (2023).

⁴⁷⁰ For a brief explanation of the First Amendment concept of commercial speech, see discussion *supra* notes 435 to 438.

⁴⁷¹ *X Corp. v. Bonta*, No. 2:23-CV-01939, 2023 WL 8948286, at *1 (E.D. Ca. Dec. 28, 2023), *rev’d and remanded*, 116 F.4th 888 (9th Cir. 2024). Among other provisions, the law required companies to file semiannual reports that include (1) information about whether the terms of service define certain categories of content such as “hate speech,” “disinformation,” and “harassment”; (2) policies intended to address these categories of content; and (3) information about content flagged as belonging to these categories. CAL. BUS. & PROF. CODE § 22677 (West 2026).

⁴⁷² *X Corp.*, 2023 WL 8948286, at *1.

⁴⁷³ *Id.*

⁴⁷⁴ *Id.*

⁴⁷⁵ *X Corp.*, 116 F.4th at 904.

⁴⁷⁶ *Id.* at 896–98.

⁴⁷⁷ *Id.* at 901.

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.*

scrutiny.⁴⁸⁰ The Ninth Circuit remanded the case to the trial court to determine whether these so-called content category reports were severable from the remainder of the statute.⁴⁸¹

Similarly, the Ninth Circuit concluded other reporting requirements in California’s CAADCA, discussed above,⁴⁸² “regulate[d] far more than mere commercial speech.”⁴⁸³ According to the court, the law required covered businesses to “opine on potential speech-based harms to children” that could be caused by third parties, not their own products or services.⁴⁸⁴ Further, the court said “businesses do not have a clear economic motivation to provide these opinions.”⁴⁸⁵ The Ninth Circuit said these requirements were “a far cry from” obligations in other laws “to collect, retain, and disclose purely factual information.”⁴⁸⁶

Thus, the Ninth Circuit concluded two California laws containing reporting requirements were subject to strict scrutiny because they compelled the businesses to provide subjective opinions about the reasons behind their content moderation policies, for categories of speech identified by the government.⁴⁸⁷ In both cases, the appeals court further held the requirements were likely to fail strict scrutiny because they were not narrowly tailored.⁴⁸⁸ For instance, in considering California provisions requiring reports about specific categories of content, the court said “[c]onsumers would still be meaningfully informed if, for example, a company disclosed whether it was moderating certain categories of speech without having to define those categories in a public report.”⁴⁸⁹

The Second Circuit reached a similar conclusion when it held that, if a New York reporting law was interpreted to require social media companies “to reference or adopt the State’s definition of ‘hateful conduct,’” then the law “would not satisfy the intermediate or strict scrutiny that would follow.”⁴⁹⁰ Citing the Ninth Circuit, the Second Circuit agreed that “a disclosure requirement that incorporates the statute’s definition of hate speech” would be more speech-restrictive than necessary, because the state “might reasonably promote the goal of ensuring that users receive accurate information about a social media network’s content moderation policies with a generic and neutral disclosure requirement.”⁴⁹¹ Weighing in at the Second Circuit’s request, the New York Court of Appeals subsequently concluded that the law’s reporting and disclosure requirements did

⁴⁸⁰ *Id.* at 903.

⁴⁸¹ *X Corp.*, 116 F.4th at 904. On remand, the parties entered into a stipulated judgment and the trial court permanently enjoined the content category reporting provisions. Order and Final Judgment and Permanent Injunction at 2–3, *X Corp. v. Bonta*, No. 23-CV-01939 (E.D. Cal. Mar. 4, 2025), Dkt. No. 59.

⁴⁸² *Supra* “Laws Targeting Particular Harms.”

⁴⁸³ *Bonta I*, 113 F.4th 1101, 1120 (9th Cir. 2024).

⁴⁸⁴ *Id.* at 1119–20.

⁴⁸⁵ *Id.* at 1120.

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.* at 1101, 1119–20 (9th Cir. 2024); *X Corp. v. Bonta*, 116 F.4th 888, 898 (9th Cir. 2024).

⁴⁸⁸ *Bonta I*, 113 F.4th at 1121; *X Corp.*, 116 F.4th at 903. The analysis in *Bonta I* is also discussed *supra* “Laws Targeting Particular Harms.”

⁴⁸⁹ *X Corp.*, 116 F.4th at 903.

⁴⁹⁰ *Volokh v. James*, 148 F.4th 71, 93 (2d Cir. 2025), *accepting certified question*, 267 N.E.3d 1245 (N.Y. 2025), *answering certified question*, No. 58, 2026 WL 1790976 (N.Y. June 23, 2026); *see also id.* (“Requiring a social media network to disclose a content moderation policy that explains its procedures with respect to hateful conduct, as defined by the statute, would force that network to build and describe its framework for moderating conduct around the State’s definition, thereby burdening the networks’ expressive activity of curating content.”).

⁴⁹¹ *Id.* at 94 (citing *X Corp.*, 116 F.4th at 901). Ultimately, however, the Second Circuit certified the question about how to interpret this statute to state courts, saying the law was susceptible to competing interpretations. *Id.* at 100.

not require platforms to expressly refer to the statute's definition of *hateful conduct*.⁴⁹² In the view of the state court, the law's purpose "was not to regulate networks' moderation decisions or to compel networks to endorse the State's view that hateful conduct is socially destructive."⁴⁹³ The court confirmed that an alternate reading would raise greater First Amendment concerns.⁴⁹⁴

Beyond reporting requirements, two courts that have ruled on the merits of state laws requiring warning labels have said those requirements are likely unconstitutional.⁴⁹⁵ The Fifth Circuit enjoined a Texas law that required some sites carrying sexually explicit content to provide warnings about the effects of pornography and share the number of a mental health hotline.⁴⁹⁶ The court concluded the law regulated commercial speech.⁴⁹⁷ The court explained that the warnings had to be placed on advertisements and on the websites themselves, and those webpages were "proposing 'no more than' a commercial transaction": "you give us money and we give you porn."⁴⁹⁸ Citing "dueling experts and studies" regarding the purportedly negative health effects, the court further concluded that these health warnings were not "uncontroversial," and therefore *Zauderer* review did not apply.⁴⁹⁹ The Fifth Circuit held the warnings could not satisfy *Central Hudson* intermediate scrutiny.⁵⁰⁰ While the court said the government "has a substantial—and even compelling—interest in preventing minors from accessing pornography," these warnings were not appropriately tailored to that goal.⁵⁰¹ Among other factors, the court observed that "Texas has not made any showing that it tried a government-funded public information campaign or that such a campaign would be ineffective."⁵⁰²

In another case, a federal trial court considered a Colorado law that required covered social media platforms to provide minor users "with information about their engagement in social media that helps the user understand the impact of social media on the developing brain and the mental and physical health of youth users."⁵⁰³ In the court's view, the disclosures required the companies to share opinions that "pertain to expressive issues of significant social, political, and scientific concern—and not matters of a commercial character."⁵⁰⁴ Applying strict scrutiny, the court assumed that the state had a compelling interest in informing minors about risks of harm but concluded that the law's "compelled speech requirement [likely] is not the least restrictive means

⁴⁹² *Volokh v. James*, No. 58, 2026 WL 1790976, at *5 (N.Y. June 23, 2026).

⁴⁹³ *Id.* at *7.

⁴⁹⁴ *Id.* at *6 n.5, *7.

⁴⁹⁵ *Free Speech Coal., Inc. v. Paxton*, 95 F.4th 263, 279 (5th Cir. 2024), *aff'd on other grounds*, 606 U.S. 461 (2025); *NetChoice v. Weiser*, 808 F. Supp. 3d 1223, 1236 (D. Colo. 2025), *appeal docketed*, No. 25-1456 (10th Cir. Dec. 9, 2025).

⁴⁹⁶ *Free Speech Coal., Inc.*, 95 F.4th at 279.

⁴⁹⁷ *Id.* at 281.

⁴⁹⁸ *Id.* at 280. At the outset of this analysis, the court emphasized that "the statute reaches only those entities that publish or distribute sexual material harmful to minors *for commercial or business purposes*." *Id.*

⁴⁹⁹ *Id.* at 282.

⁵⁰⁰ *Id.* at 283.

⁵⁰¹ *Id.* The state did not assert "an interest in preventing adult access to obscenity." *Id.* at 283 n.66.

⁵⁰² *Id.* at 284. The court also observed, for instance, that because the law also imposed age verification requirements and barred minors, the "warnings displayed on the landing page and subsequent pages will presumably not reach any minors," and "Texas has made no showing that they will discourage minors who have circumvented the age restrictions from accessing pornography." *Id.*

⁵⁰³ COLO. REV. STAT. § 6-1-1601 (2026).

⁵⁰⁴ *NetChoice v. Weiser*, 808 F. Supp. 3d 1223, 1236 (D. Colo. 2025), *appeal docketed*, No. 25-1456 (10th Cir. Dec. 9, 2025). In concluding the disclosures were not commercial speech, the court also observed (among other factors) that the disclosures did "not refer to a particular product" but to social media in general. *Id.*

available for advancing that compelling interest.”⁵⁰⁵ The court said that, for example, the state instead “could have incentivized social media companies to voluntarily provide these disclosures to their minor users, or it could have elected to provide minors with these disclosures itself.”⁵⁰⁶

Considerations for Congress

Several Members of Congress have introduced bills that would create various disclosure requirements for online platforms. The Transparency in Enforcement, Restricting, and Monitoring of Services (TERMS) Act, for instance, would require covered providers to publicly disclose information about their policies on decisions “to restrict a user.”⁵⁰⁷ The Stop the Scroll Act would require covered platforms to display a mental health warning label.⁵⁰⁸

As a form of compelled speech, disclosure requirements are likely to trigger a heightened level of constitutional scrutiny, either strict scrutiny or intermediate scrutiny, unless they require only purely factual and uncontroversial speech about a company’s own goods or services.⁵⁰⁹ A law subject to strict scrutiny is “presumptively unconstitutional.”⁵¹⁰ A disclosure law regulating commercial speech, however, might receive either intermediate scrutiny or the lower level of *Zauderer* review.

It may be difficult to determine whether any given disclosure requirement involves commercial speech and therefore avoids strict scrutiny. The jurisprudence on this issue is unclear, as it appears that courts have looked to slightly different aspects of the speech.⁵¹¹ For instance, in the Colorado ruling mentioned above, the federal trial court applied strict scrutiny after concluding the government message—the disclosure requirement itself—did “more than merely propose a commercial transaction.”⁵¹² In contrast, in considering a Texas law, the Fifth Circuit evaluated the regulated entity’s speech, asking whether the advertisements and webpages where the disclosures would be placed were commercial speech.⁵¹³ In another approach, the Eleventh Circuit concluded *Zauderer* applied where the state’s interest was in providing information to “consumers who engage in commercial transactions with platforms by providing them with a user and data for advertising in exchange for access to a forum.”⁵¹⁴ Thus, in applying the various definitions of *commercial speech*,⁵¹⁵ courts may disagree on whether they should be evaluating the commercial

⁵⁰⁵ *Id.* at 1240.

⁵⁰⁶ *Id.*

⁵⁰⁷ S. 2010, 119th Cong. § 4 (2025); H.R. 3875, 119th Cong. § 4 (2025). *Cf.* Online Consumer Protection Act, H.R. 2889, 119th Cong. § 2 (2025) (requiring social media platforms to “establish, maintain, and make publicly available” terms of service covering certain issues).

⁵⁰⁸ S. 1885, 119th Cong. § 4 (2025).

⁵⁰⁹ *Zauderer v. Off. of Disciplinary Couns.*, 471 U.S. 626, 651 (1985).

⁵¹⁰ *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

⁵¹¹ The Supreme Court’s most recent opinion considering the applicability of *Zauderer* did not specifically rule on whether the disclosures at issue involved commercial speech. *Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 776 (2018).

⁵¹² *NetChoice v. Weiser*, 808 F. Supp. 3d 1223, 1236 (D. Colo. 2025), *appeal docketed*, No. 25-1456 (10th Cir. Dec. 9, 2025).

⁵¹³ *Free Speech Coal., Inc. v. Paxton*, 95 F.4th 263, 280 (5th Cir. 2024), *aff’d on other grounds*, 606 U.S. 461 (2025).

⁵¹⁴ *NetChoice, LLC v. Att’y Gen.*, 34 F.4th 1196, 1230 (11th Cir. 2022), *vacated and remanded sub nom.*, *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024).

⁵¹⁵ The Supreme Court has defined *commercial speech* both as speech that “does ‘no more than propose a commercial transaction,’” *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 762 (1976) (quoting *Pitt. Press Co. v. Pitt. Comm’n on Hum. Rels.*, 413 U.S. 376, 385 (1973)), as “expression related solely to the economic interests (continued...) ”

nature of the speech being affected by the disclosure, the content of the disclosure requirement alone, or the government's motivation.

Courts have been more likely to reject First Amendment challenges to laws requiring companies to disclose factual information about their existing activity, citing *Zauderer*.⁵¹⁶ A disclosure likely will not be subject to *Zauderer*'s lower level of constitutional scrutiny if a law requires a company to convey the government's opinions about certain types of speech—such as if a reporting requirement requires a company to use or communicate government definitions that entail a subjective judgment about speech.⁵¹⁷

In addition, factual reporting requirements may still be held unconstitutional under *Zauderer* if they are unduly burdensome.⁵¹⁸ For instance, courts have said even a factual disclosure requirement can be unduly burdensome if it would drown out the company's own speech⁵¹⁹ or would require "potentially significant implementation costs."⁵²⁰ Accordingly, under any level of scrutiny—whether the easier-to-satisfy *Zauderer* standard or a heightened standard—Congress may choose to consider the nature and extent of the burden a given disclosure requirement imposes on the regulated entity.

For a discussion of policy considerations related to transparency requirements, see CRS Report R47662, *Defining and Regulating Online Platforms*, coordinated by Clare Y. Cho (2023).

Select Additional Arguments Raised Against State Social Media Laws

In some lawsuits challenging state regulations of online platforms, the challengers have argued that—in addition to violating the First Amendment—the state laws at issue are invalid for alternative reasons.⁵²¹ Two of these alternative arguments are based on federal law: First, several challengers have argued that state online platform laws are preempted by Section 230 of the Communications Act of 1934;⁵²² second, some challengers have argued that state online platform laws violate the dormant Commerce Clause.⁵²³

of the speaker and its audience," Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n, 447 U.S. 557, 561 (1980), and has used a three-part test that looks, in part, to the speaker's "economic motivation," Bolger v. Youngs Drug Prods. Corp., 463 U.S. 60, 66–67 (1983).

⁵¹⁶ *E.g.*, *Att'y Gen.*, 34 F.4th at 1230.

⁵¹⁷ *E.g.*, *X Corp. v. Bonta*, 116 F.4th 888, 901 (9th Cir. 2024); *Volokh v. James*, 148 F.4th 71, 93 (2d Cir. 2025), *accepting certified question*, 267 N.E.3d 1245 (N.Y. 2025), *answering certified question*, No. 58, 2026 WL 1790976 (N.Y. June 23, 2026).

⁵¹⁸ *E.g.*, *NetChoice v. Griffin*, 831 F. Supp. 3d 816, 834 (W.D. Ark. 2026).

⁵¹⁹ *Nat'l Inst. of Fam. & Life Advoc. v. Becerra*, 585 U.S. 755, 778 (2018).

⁵²⁰ *Att'y Gen.*, 34 F.4th at 1230.

⁵²¹ *See, e.g.*, *NetChoice v. Carr*, 789 F. Supp. 3d 1200, 1231 (N.D. Ga. 2025), *appeal docketed*, No. 25-12436 (11th Cir. July 16, 2025); *NetChoice v. Griffin*, 812 F. Supp. 3d 905, 930 (W.D. Ark. 2025), *appeal docketed*, No. 26-1096 (8th Cir. Jan. 16, 2026).

⁵²² 47 U.S.C. § 230; *see, e.g.*, *Moody v. NetChoice, LLC*, 603 U.S. 707, 772 n.8 (2024) ("NetChoice also argued that S.B. 7072 is preempted by 47 U.S.C. § 230(c) . . .").

⁵²³ *See, e.g.* *NetChoice, LLC v. Bonta*, 770 F. Supp. 3d 1164, 1214 (N.D. Cal. 2025) ("NetChoice asserts that the CAADCA violates the dormant Commerce Clause."), *aff'd in part, vacated in part*, 170 F.4th 744 (9th Cir. 2026).

Preemption

Preemption is a legal doctrine rooted in the Constitution’s Supremacy Clause, which provides that “the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”⁵²⁴ Under the Supremacy Clause,” the Supreme Court has explained, “Congress has the power to preempt state law.”⁵²⁵ Congress may “enact[] a law that imposes restrictions or confers rights on private actors,” and if “a state law confers rights or imposes restrictions that conflict with the federal law . . . the federal law takes precedence and the state law is preempted.”⁵²⁶

A federal law can expressly or impliedly preempt state law.⁵²⁷ In both cases, “the purpose of Congress is the ultimate touchstone” of a court’s determination about whether and to what extent a federal law displaces state regulations.⁵²⁸

Express Preemption

Congress can expressly preempt state law by including a provision in a statute that “withdraw[s] specified powers from the States.”⁵²⁹ If Congress does enact an express preemption clause, the scope of preemption usually depends on the particular language used in the clause.⁵³⁰

The Supreme Court has held that provisions preempting state laws “related to” certain subject matter are “deliberately expansive.”⁵³¹ When Congress uses “related to” in a preemption clause, the federal law can preempt state laws that have “a connection with or reference to” the relevant subject matter.⁵³²

Preemption clauses that apply to state laws “covered” by the federal law are narrower: they preempt a state law if the federal statute “substantially subsume[s] the subject matter of the relevant state law.”⁵³³

Alternatively, Congress can include a savings clause in a statute to expressly preserve state laws that Congress does not want to preempt.⁵³⁴ A statute can also provide for a “federal floor” that permits states to enact more protective regulations that address the same subject matter as a federal statute.⁵³⁵

⁵²⁴ U.S. CONST. art. VI, cl. 2.

⁵²⁵ *Arizona v. United States*, 567 U.S. 387, 399 (2012).

⁵²⁶ *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 477–79 (2018). For more information about preemption, see CRS Report R45825, *Federal Preemption: A Legal Primer*, by Bryan L. Adkins, Alexander H. Pepper, and Jay B. Sykes (2023).

⁵²⁷ *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992).

⁵²⁸ *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)).

⁵²⁹ *Arizona*, 567 U.S. at 399.

⁵³⁰ See *Dan’s City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260–65 (2013).

⁵³¹ *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46 (1987)).

⁵³² *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983).

⁵³³ *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993).

⁵³⁴ *E.g.*, 31 U.S.C. § 5362(10)(D)(ii) (“Nothing in this subchapter may be construed to preempt any State law prohibiting gambling.”).

⁵³⁵ *Citizens for Health v. Leavitt*, 428 F.3d 167, 174 (3d Cir. 2005).

Implied Preemption

Even if a federal law does not include an express preemption clause, it may impliedly preempt state law.⁵³⁶ The Supreme Court has held that “state laws are preempted when they conflict with federal law”—either because compliance with both the state and federal laws is physically impossible or because the state law stands as an obstacle to fully executing Congress’s purposes and objectives.⁵³⁷

In addition, states may be precluded from regulating within a field when Congress enacts a “framework of regulation ‘so pervasive . . . that Congress left no room for the States to supplement it’ or where there is a ‘federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.’”⁵³⁸

Section 230 of the Communications Act of 1934

The primary preemption argument that has arisen in litigation over state regulations of online platforms is based on Section 230 of the Communications Act of 1934.⁵³⁹

Section 230 provides certain immunities from legal liability to providers and users of “interactive computer services,”⁵⁴⁰ a broad, statutorily defined category that includes most online platforms.⁵⁴¹ Under Section 230(c)(1), providers and users of interactive computer services are immune from legal claims that treat them as a publisher or speaker and are based on information provided by another information content provider.⁵⁴² Under Section 230(c)(2), providers and users of interactive computer services are immune from suits based on “good faith” actions to restrict access to or availability of content the provider or user considers to be “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.”⁵⁴³ Section 230(c)(2) also immunizes providers and users from suits based on actions that make available the technical means to restrict access to such material.⁵⁴⁴ Online platforms have successfully raised Section 230 as a defense to a variety of lawsuits that seek to hold them liable for publishing or restricting access to content created by a third party.⁵⁴⁵

⁵³⁶ *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 480 (2013).

⁵³⁷ *Arizona v. United States*, 567 U.S. 387, 399 (2012).

⁵³⁸ *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

⁵³⁹ 47 U.S.C. § 230. For more information on Section 230, see CRS Report R46751, *Section 230: An Overview*, by Valerie C. Brannon and Eric N. Holmes (2024).

⁵⁴⁰ 47 U.S.C. § 230(c). An *interactive computer service* is defined, in relevant part, as a service “that provides or enables computer access by multiple users to a computer server.” *Id.* § 230(f)(2).

⁵⁴¹ *See, e.g., Klayman v. Zuckerberg*, 753 F.3d 1354, 1357 (D.C. Cir. 2014) (“Facebook qualifies as an interactive computer service because it is a service that provides information to ‘multiple users’ by giving them ‘computer access . . . to a computer server,’ namely the servers that host its social networking website.” (quoting 47 U.S.C. § 230(f)(2))).

⁵⁴² 47 U.S.C. § 230(c)(1).

⁵⁴³ *Id.* § 230(c)(2)(A).

⁵⁴⁴ *Id.* § 230(c)(2)(B).

⁵⁴⁵ *See, e.g., Force v. Facebook, Inc.*, 934 F.3d 53, 57 (2d Cir. 2019) (holding that Section 230(c)(1) barred claims that “that Facebook unlawfully provided Hamas, a U.S.-designated foreign terrorist organization, with a communications platform that enabled [terrorist] attacks”); *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1096–1100 (9th Cir. 2019) (holding that Section 230(c)(1) barred claims against a social networking website that was used to facilitate a sale of illegal drugs).

Section 230 includes an express preemption clause: “No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with” Section 230.⁵⁴⁶ Pointing to this language, some parties challenging state regulations of online platforms have contended that Section 230 preempts the state law.⁵⁴⁷ For example, in the lawsuit challenging Maryland’s Age-Appropriate Design Code Act,⁵⁴⁸ the challengers contended that the Maryland law imposed “liability for editorial choices regarding third parties’ content,” which is inconsistent with the immunities provided by Section 230.⁵⁴⁹

The courts that have addressed Section 230 preemption in cases challenging state social media laws have focused on the extent to which the challenged state regulation would impose liability on online platforms for publishing third-party speech.⁵⁵⁰ The Fifth Circuit, for example, held that “monitoring and filtering” requirements in Texas’s HB 18 were preempted by Section 230.⁵⁵¹ The provisions at issue required covered platforms “to ‘implement a strategy’ to prevent known minors’ exposure to ‘harmful material,’” and the court determined that enforcement of these provisions would depend on whether the platforms “adequately filter[ed]” such harmful material.⁵⁵² Enforcement actions would therefore, the court explained, turn on the platforms’ “actions as publishers.”⁵⁵³ They could be held liable for “their monitoring, screening, and deletion of content” posted by third-party users,⁵⁵⁴ so Texas’s “monitoring and filtering” requirements were preempted by Section 230.⁵⁵⁵

A federal trial court similarly held that a Georgia law prohibiting platforms from targeting advertising to minor users was likely preempted by Section 230.⁵⁵⁶ The advertising prohibition, the court explained, “would impose liability on social media platforms for their decisions (or lack thereof) on ‘whether to publish, withdraw, postpone or alter’ specific advertisements to young users.”⁵⁵⁷

A federal trial court reviewing a facial challenge to an Arkansas law, by comparison, held that the law was not likely preempted by Section 230.⁵⁵⁸ In that case, the court determined that law at issue had applications, such as a prohibition on “designs that make it difficult to delete one’s account,” for which “liability [was] not premised on a platform’s editorial decisions about third-party content at all.”⁵⁵⁹

⁵⁴⁶ 47 U.S.C. § 230(e)(3).

⁵⁴⁷ See, e.g., *NetChoice v. Brown*, No. 25-0322, 2025 WL 3267786, at *15 (D. Md. Nov. 24, 2025); *NetChoice v. Griffin*, 812 F. Supp. 3d 905, 930 (W.D. Ark. 2025), *appeal docketed*, No. 26-1096 (8th Cir. Jan. 16, 2026).

⁵⁴⁸ MD. CODE ANN. COM. LAW §§ 14-4801 to -4813 (West 2026).

⁵⁴⁹ *Brown*, 2025 WL 3267786, at *23.

⁵⁵⁰ *NetChoice v. Carr*, 789 F. Supp. 3d 1200, 1231 (N.D. Ga. 2025), *appeal docketed*, No. 25-12436 (11th Cir. July 16, 2025).

⁵⁵¹ *Comput. & Commc’ns Indus. Ass’n v. Paxton*, No. 24-50721, 2026 WL 2130729, at *14 (5th Cir. July 24, 2026).

⁵⁵² *Id.* at *12 (quoting TEX. BUS. & COM. CODE § 509.053 (West 2026)).

⁵⁵³ *Id.*

⁵⁵⁴ *Id.*

⁵⁵⁵ *Id.* at *14.

⁵⁵⁶ *NetChoice v. Carr*, 789 F. Supp. 3d 1200, 1231–32 (N.D. Ga. 2025), *appeal docketed*, No. 25-12436 (11th Cir. July 16, 2025).

⁵⁵⁷ *Id.* (quoting 47 U.S.C. § 230).

⁵⁵⁸ *NetChoice v. Griffin*, 812 F. Supp. 3d 905, 930 (W.D. Ark. 2025), *appeal docketed*, No. 26-1096 (8th Cir. Jan. 16, 2026). The distinction between facial and as-applied challenges is discussed *supra* “Facial Challenges.”

⁵⁵⁹ *Griffin*, 812 F. Supp. 3d at 930.

Dormant Commerce Clause

Parties challenging state regulations of online platforms have also sometimes argued the regulations violate the dormant Commerce Clause.⁵⁶⁰ The Commerce Clause in the Constitution grants Congress the power to regulate interstate and foreign commerce.⁵⁶¹ It does not expressly address state authority.⁵⁶² The Supreme Court, however, has “long held that [the Commerce] Clause also prohibits state laws that unduly restrict interstate commerce,” even if Congress has not expressly exercised its Commerce Clause authority to regulate a certain area.⁵⁶³ This “dormant” aspect of the Commerce Clause generally “prevents the States from adopting protectionist measures and thus preserves a national market for goods and services.”⁵⁶⁴ The Supreme Court has relied on the dormant Commerce Clause when declining to enforce state laws that directly regulate out-of-state transactions between parties with no connection to the state that enacted the law.⁵⁶⁵

Parties challenging state regulations of online platforms have argued that certain regulations transgress these limits. In a lawsuit challenging California’s CAADCA, for example, the plaintiff argued that California’s design code applied anytime a California resident used a covered platform—even if the use occurred entirely outside of the state—in violation of the dormant Commerce Clause.⁵⁶⁶ A plaintiff challenging a Virginia law regulating online platforms raised a similar challenge.⁵⁶⁷ Virginia’s law, the plaintiff argued, applied to all platforms that conduct business in Virginia or provide services that target Virginia residents and have a sufficiently large number of users.⁵⁶⁸ As soon as these conditions were met, Virginia’s law restricted platforms’ wholly out-of-state activities, and this, the plaintiff argued, violated the dormant Commerce Clause.⁵⁶⁹

In most of the challenges to state platform regulations, including the California and Virginia cases mentioned above, courts have not yet addressed the substance of these dormant Commerce Clause arguments.⁵⁷⁰

⁵⁶⁰ See *NetChoice, LLC v. Bonta*, 770 F. Supp. 3d 1164, 1214 (N.D. Cal. 2025), *aff’d in part, vacated in part*, 170 F.4th 744 (9th Cir. 2026).

⁵⁶¹ U.S. CONST. art. I, § 8, cl. 3.

⁵⁶² *Id.*

⁵⁶³ *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 588 U.S. 504, 514 (2019).

⁵⁶⁴ *Id.*

⁵⁶⁵ See *Nat’l Pork Prods. Council v. Ross*, 598 U.S. 356, 376 n.1 (2023) (citing *Edgar v. MITE Corp.*, 457 U.S. 624, 641–43 (1982)).

⁵⁶⁶ *NetChoice, LLC v. Bonta*, 770 F. Supp. 3d 1164, 1214 (N.D. Cal. 2025), *aff’d in part, vacated in part*, 170 F.4th 744 (9th Cir. 2026).

⁵⁶⁷ Plaintiff’s Memorandum in Support of Motion for a Preliminary Injunction at 21, *NetChoice v. Jones*, No. 1:25-CV-2067 (E.D. Va. Nov. 21, 2025), Dkt. No. 5 (citing VA. CODE ANN. § 59.1-576(A) (2025)).

⁵⁶⁸ *Id.*

⁵⁶⁹ *Id.*

⁵⁷⁰ See *Bonta*, 770 F. Supp. 3d at 1214 (“The briefing on these issues, comprising approximately one page per party, and the record regarding potential extraterritorial applications of the Act, are insufficient for the careful analysis that would be required before the Court could find the Act facially invalid under the dormant Commerce Clause.”); *NetChoice, LLC v. Moody*, 546 F. Supp. 3d 1082, 1085 (N.D. Fla. 2021) (stating that challengers “allege[d] the Act violates the Constitution’s dormant commerce clause,” but not otherwise addressing the claim), *aff’d in part, vacated in part, remanded sub nom.*, *NetChoice, LLC v. Att’y Gen.*, 34 F.4th 1196 (11th Cir. 2022), *vacated and remanded sub nom.*, *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024). A trial court did hold that a Montana law banning one online platform from operating in Montana likely violated the dormant Commerce Clause. *Alario v. Knudsen*, 704 F. Supp. 3d 1061, 1087 (D. Mont. 2023).

Considerations for Congress

Section 230

Congress could amend Section 230 to clarify, expand, or limit its preemption of state regulations of online platforms.⁵⁷¹ In addition, if Congress were to enact new federal regulations of online platforms, Congress could specify whether or to what extent Section 230 immunity applied to any liability provisions in the new law.⁵⁷²

When considering potential regulations of online platforms, Congress might also consider whether to expressly preempt or preserve certain state regulations of online platforms. Recent congressional proposals to regulate online platforms include a variety of preemption provisions. The KIDS Act in the 119th Congress, for example, would expressly preempt state laws “only to the extent that [they] conflict[] with a provision of this Act.”⁵⁷³ The KIDS Act also includes savings clauses, providing that “nothing in th[e] Act may be construed” to preempt “contract, tort, or product liability” laws or to prohibit state laws that “provide[] greater protection to minors.”⁵⁷⁴ A stand-alone version of the Kids Online Safety Act that was introduced in the House takes a broader approach to preemption.⁵⁷⁵ It would preempt state laws that “relate to” the provisions in the bill.⁵⁷⁶ The Algorithmic Transparency and Choice Act takes an intermediate path.⁵⁷⁷ It would preempt state laws that “cover[]” the requirements prescribed in the bill.⁵⁷⁸

Dormant Commerce Clause

Regardless of the outcome of the dormant Commerce Clause challenges to state laws regulating online platforms, Congress remains free to regulate online platforms engaged in interstate commerce.⁵⁷⁹ Congress also may enact laws expressly authorizing states to burden interstate commerce in specified ways.⁵⁸⁰ The Supreme Court has made clear that its dormant Commerce Clause cases “do not . . . limit the authority of Congress to regulate commerce among the several States as it sees fit.”⁵⁸¹

⁵⁷¹ Proposals to amend Section 230 can, however, raise First Amendment issues. *See* Brannon & Holmes, CRS Report R46751, *Section 230: An Overview*, *supra* note 539 (at “Free Speech Considerations”).

⁵⁷² *Cf.* 47 U.S.C. § 230(e) (providing for certain exceptions to Section 230’s immunity provisions); Deepfake Liability Act, H.R. 6334, 119th Cong. (2025) (proposing amendments that would limit Section 230(c)(1) immunity for providers of interactive computer services unless the providers take prescribed actions to address cyberstalking and intimate privacy violations); STOP CSAM Act of 2025, S. 1829, 119th Cong. (2025); STOP CSAM Act of 2025, H.R. 3921, 119th Cong. (2025) (creating a cause of action and providing that “[n]othing in section 230 of the Communications Act of 1934 . . . shall be construed to impair or limit any claim brought under” the cause of action).

⁵⁷³ KIDS Act, H.R. 7757, 119th Cong. § 704(a) (2026).

⁵⁷⁴ *Id.* § 704(b).

⁵⁷⁵ Kids Online Safety Act, H.R. 6484, 119th Cong. (2025).

⁵⁷⁶ *Id.* § 10.

⁵⁷⁷ Algorithmic Transparency and Choice Act, H.R. 6253, 119th Cong. (2025).

⁵⁷⁸ *Id.* § 2(e).

⁵⁷⁹ *W. & S. Life Ins. Co. v. State Bd. of Equalization of Cal.*, 451 U.S. 648, 652 (1981).

⁵⁸⁰ *New York v. United States*, 505 U.S. 144, 171 (1992) (“Whether or not the States would be permitted to burden the interstate transport of low level radioactive waste in the absence of Congress’ approval, the States can clearly do so *with* Congress’ approval, which is what the Act gives them.”).

⁵⁸¹ *W. & S. Life Ins. Co.*, 451 U.S. at 652.

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