No. 25-12436

In the

United States Court of Appeals

for the Eleventh Circuit

NetChoice,

Plaintiff-Appellee,

v.

Attorney General, State of Georgia,

Defendant-Appellant.

On Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division.
No. 1:25-cv-02422 — Amy Totenberg, *Judge*

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INTRODUCTION

The First Amendment does not prohibit states from enacting age-verification and parental-consent regulations to protect children from the widely recognized harms caused by social media use. Georgia's SB 351 regulates access to certain digital locations that are dangerous to children because of how they *work*: the incentives they create, the interactions they enable, and the addiction they inculcate. That is not a speech regulation, even if speech happens at the locations. Regardless, SB 351 would be content neutral if it did regulate speech. It targets the functions that make social media harmful—user-generated posting and interactivity—not any underlying content. And SB 351 certainly satisfies intermediate scrutiny.

Besides, NetChoice faces a threshold problem: It lacks standing—and its brief proves it. NetChoice invokes associational standing, which would empower it to assert the rights of its members, yet it never actually asserts the rights of its members. Its merits arguments challenging the age-verification and parental-consent provisions are all about the rights of social media *users*. And NetChoice cannot assert the rights of those users. NetChoice may have a relationship with the *platforms* it lobbies for, but it has no relationship with the platforms' users—whose

interests it often opposes. Nor do those users face any barrier to bringing their own suits. That bars third-party standing; it certainly bars NetChoice's attempt at fourth-party standing.

This Court should allow SB 351 to take effect.

ARGUMENT

I. NetChoice lacks standing.

NetChoice relies on two theories of standing: associational standing to assert its members' rights and fourth-party standing to assert the rights of its members' users. Neither works.

A. NetChoice lacks associational standing.

The Attorney General has explained why NetChoice cannot rely on associational standing. *See* Opening.Br.22–26; *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977); *Free Speech Coal., Inc. v. Att'y Gen.*, 974 F.3d 408, 421–22 (3d Cir. 2020). Far from rebutting that, NetChoice confirms that associational standing is off the table: Throughout its brief, NetChoice frames its merits arguments as *exclusively* about the rights of social media *users*. *See, e.g.*, Resp.Br.37. And an association that does not assert its members' rights cannot have associational standing. To evade that problem, NetChoice briefly suggests that any violation of users' right to "access" platforms

necessarily burdens its members' parallel right to "disseminate" speech. *Id.* at 51. But that theory is invalid, inapplicable, and unhelpful anyway.

1. NetChoice's own brief confirms that its First Amendment theories are fundamentally incompatible with associational standing. Unlike the court below, NetChoice does not assert that SB 351's age-verification and parental-consent provisions unconstitutionally burden the *platforms'* speech. Instead, it grounds its First Amendment challenges in the purported rights of social media *users* to "access" those platforms.

That is most apparent in NetChoice's discussion of *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024). According to NetChoice, *Moody* considered which websites were covered by the challenged law, their degree of editorial discretion, and their varying burdens *only* because those issues were relevant to the legal claims in *Moody*. Resp.Br.37–38. Those issues aren't relevant here, NetChoice says, because the *only* "pertinent facts" in this case are "[w]hether the laws in question restrict *access* to fully protected speech." *Id.* (quotation omitted and emphasis added). And it says the platforms' differing compliance burdens or levels of editorial discretion do not matter because the *users*' right to "access" those platforms is at issue. *Id.* at 39–40. Indeed, throughout its brief,

NetChoice argues that the First Amendment is triggered because of burdens on users' rights, *e.g.*, *id.* at 6, 9, 12–14, 17, and its scrutiny arguments are likewise based on considerations about users, *e.g.*, *id.* at 20, 23, 26–27. In short, NetChoice's merits arguments foreclose any theory of standing that relies on a purported burden on the speech of its member platforms.

Even if NetChoice could use associational standing to assert non-member rights, its members' individual participation would still be required. Certain NetChoice members, such as Reddit and X, allow pornography. *See* Opening.Br.57. That raises distinct questions about SB 351's application to those members, even viewed through the lens of users' access rights. *See id.*; *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 497 (2025). Answering those questions will require individual inquiries into each platform's policies, the rate of (and controls on) minors' access to pornography, and other questions that call for member-specific discovery. Likewise, any application of First Amendment scrutiny to SB 351 would require a close look at platforms' individual policies that may affect the degree of bullying, harassing, stalking, sexual predation, etc. on their sites. Those platform-by-platform assessments are a square peg in the round hole of associational standing.

2. Recognizing that its merits theories turn on the rights of *users*, but that its primary standing theory is (and must be) about the rights of its *members*, NetChoice hastily tries to collapse the distinction. NetChoice posits that restricting users' "access" to platforms always and automatically infringes platforms' (apparently) coterminous right to "disseminate" speech. Resp.Br.51. Belying the premise, NetChoice's "dissemination" theory appears nowhere else in its brief. Regardless, NetChoice's latest standing theory is a nonstarter, would not apply even if it were valid, and reintroduces all the individualized inquiries NetChoice hopes to avoid.

a. At bottom, NetChoice's argument is a blatant attempt to circumvent third-party standing requirements while asserting third-party rights. If a restriction on any *listener* necessarily injured every *speaker*, third-party standing would never have been developed in this context. For example, the Supreme Court's decision to let booksellers assert the rights of third-party customers makes no sense under NetChoice's theory that the booksellers' *own* rights were at issue all along. *See Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 392–93 (1988). Moreover, the only decision NetChoice cites for its theory held that the *recipient* of information had standing to sue based on his

own "right to receive" it. *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 756–57 (1976). NetChoice also gestures at *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786 (2011), and *Paxton*, Resp.Br.51, but neither addressed standing at all, much less NetChoice's alchemical theory, and this Court does not adopt "drive-by jurisdictional rulings," anyway, *Kondrat'yev v. City of Pensacola*, 949 F.3d 1319, 1325 n.2 (11th Cir. 2020) (quotation omitted).

Even if it were viable in theory, NetChoice's "dissemination" argument cannot work in this context. As social media platforms, rather than content creators, its members' only relevant First Amendment interest is in the "expressive activity" of "compiling and curating others' speech." *Moody*, 603 U.S. at 731. But SB 351 neither restricts those choices nor the ability to "disseminate" them. Platforms can and do publish their "editorial discretion" policies. *See, e.g.*, Doc 23-3 at 25, 68, 86.

b. Assuming NetChoice *could* assert a "dissemination" interest, that would merely reintroduce the individualized inquiries the Attorney General has identified—and which preclude associational standing. *See* Opening.Br.23–26. Different platforms exercise different degrees of editorial discretion, raising different questions of speech interest for each platform.

NetChoice, LLC v. Bonta, 152 F.4th 1002, 1014 (9th Cir. 2025). And different platforms would face varying compliance burdens, raising different tailoring considerations for each platform. *Free Speech Coal.*, 974 F.3d at 422.

NetChoice argues that the speech interests here are uniform because platforms just "prioritize different kinds of content" and the legal questions do not turn on "what kinds of fully protected speech websites disseminate." Resp.Br.48. But the question is "whether," "as to every covered platform or function, … there is an intrusion on protected editorial discretion." *Moody*, 603 U.S. at 725. The presence and degree of editorial discretion, and of any intrusion on that discretion, bears on the outcome under heightened scrutiny. *See id.* at 725–26; *Bonta*, 152 F.4th at 1014.

NetChoice also tries reinventing tailoring as an amorphous, abstract exercise untethered from concrete speech interests. It argues that whether "a statute's entire coverage is properly tailored depends 'on the relation it bears to the overall problem the government seeks to correct, not on the extent to which it furthers the government's interest in an individual case.'" Resp.Br.42 (quoting *United States v. Edge Broad. Co.*, 509 U.S. 418, 430 (1993)) (emphasis removed). That's sleight of hand. The language NetChoice cites concerns whether the law *furthers the*

government's interest, not the burden it imposes on speech. And that language is *favorable* to the government—it means the government need not "prove that the state interests supporting the rule actually were advanced by applying the rule in [the plaintiff's] particular case." *Edge Broad. Co.*, 509 U.S. at 431.

In a similar vein, NetChoice argues that compliance burdens do not matter because "whether a company can afford to comply with a speech restriction does not make the speech restriction constitutional." Resp.Br.48; *see also id.* at 21–22. NetChoice relies on *Minneapolis Star & Tribune Company v. Minnesota Commissioner of Revenue*, which involved a law that singled out large newspapers for differential taxation. 460 U.S. 575, 585, 591 (1983). The only interest Minnesota claimed was in the maintenance of an "'equitable' tax system," but the law plainly *undermined* that interest. *Id.* at 592. *Minneapolis Star*'s concern with a "questionable" or fabricated interest, *id.*, is not applicable here. By contrast, multiple courts have recognized that varying compliance burdens can result in individualized First Amendment tailoring analyses. *See Moody*, 603 U.S. at 725–26; *NetChoice, LLC, v. Fitch*, 134 F.4th 799, 809 (5th Cir. 2025); *Free Speech Coal.*, 974 F.3d at 422.

B. NetChoice cannot assert the rights of its members' users.

NetChoice also invokes *fourth*-party standing by attempting to vindicate the rights of its members' users. But to invoke even *third*-party standing, a plaintiff must have "a close relation to the third party" and there must be "some hindrance to the third party's ability to protect his or her own interests." *Harris v. Evans*, 20 F.3d 1118, 1122 (11th Cir. 1994) (en banc) (quotation omitted). NetChoice can show neither.

NetChoice exists solely to lobby on behalf of its members. It has no meaningful relationship—much less a "close" one—with users. *See id.* If anything, NetChoice's interests are adverse to those of users: After all, it is a corporate lobbying group that exists largely to challenge consumer-protection laws. Opening.Br.26–27. Moreover, the "most important[] justification for third-party standing" is absent here, given the lack of any "impediment to the ability of the [social media platform users] to assert their own First Amendment rights." *Harris*, 20 F.3d at 1124.

In arguing otherwise, NetChoice relies on *American Booksellers*. Resp.Br.52–53. But *American Booksellers* is simply an application of third-party standing's stringent requirements, not a special carveout from them. And it confirms NetChoice's lack of standing.

American Booksellers involved a state law prohibiting the commercial display of sexual material within sight of children. 484 U.S. at 386. Various plaintiffs, including associations of booksellers and booksellers themselves, "alleged an infringement of the First Amendment rights of bookbuyers." *Id.* at 388 n.3, 393. Without explanation, the Supreme Court said that was enough for standing. *Id.* at 393. That decision cannot be divorced from its context, which maps onto the third-party standing principles already discussed. *See supra* at 9; Opening.Br.26–31. Notably, there *was* a hindrance to direct litigation by purchasers: The law required sellers to hide sexual material, *Am. Booksellers*, 484 U.S. at 388–89, preventing would-be buyers from realizing their First Amendment injuries. The stigmatic barrier associated with suing to access pornography posed another obstacle. *Cf. Pa. Psychiatric Soc'y v. Green Spring Health Servs., Inc.*, 280 F.3d 278, 290 (3d Cir. 2002). Plus, some of the plaintiffs were booksellers, not associations, so there was no fourth-party standing problem. *See Am. Booksellers*, 484 U.S. at 388 n.3.

None of those barriers exists here: Users will be aware of SB 351's provisions because they must encounter them when creating an account. There are no stigmatic barriers to suit. And there are no actual platforms joined as plaintiffs. NetChoice lacks standing.

II. NetChoice is unlikely to succeed on the merits.

A. SB 351's age-verification and parental-consent provisions do not trigger, much less violate, the First Amendment.

NetChoice challenges SB 351's provisions requiring platforms to verify the ages of their users and, if a user is younger than 16, to obtain that user's parent's consent before creating an account. Those provisions do not even regulate speech. At most, they are content-neutral regulations that satisfy intermediate scrutiny.

1. The age-verification and parental-consent provisions do not regulate speech.

The age-verification and parental-consent provisions regulate minors contracting to enter certain dangerous digital spaces. *See* Opening.Br.32–38. They do not restrict what any platform or user can say, view, or read. It is true that speech happens on social media platforms and that a person's purpose for entering may be to engage in speech. But that does not transform an access-regulating provision into a speech regulation. *See id.; Indigo Room, Inc. v. City of Fort Myers*, 710 F.3d 1294, 1297–1300 (11th Cir. 2013); *Gary v. City of Warner Robins*, 311 F.3d 1334, 1336, 1340 (11th Cir. 2002).

NetChoice relies heavily on the Supreme Court's decision in *Brown*, Resp.Br.13–18, which held that a statute prohibiting the

sale of violent video games to minors failed strict scrutiny, *Brown*, 564 U.S. at 799. Along the way, the Court suggested that the state may have "the power to *enforce* parental prohibitions," but "it does not follow that the state has the power to prevent children from hearing or saying anything *without their parents' prior consent*." *Id.* at 795 n.3. That power would suggest, the Court thought, that states could ban people from admitting minors to political rallies or churches, or from giving them "a religious tract," "without their parents' prior written consent." *Id.* Of course, the Court was not reviewing such a law, or even a law requiring parental consent to buy a violent video game.

As the Attorney General has explained, the Court's dicta in *Brown* concerns the state's inability to shield children from certain expressive content—*i.e.*, "the *ideas* to which children may be exposed" when "hearing or saying" things, *id.* at 794, 795 n.3 (emphasis added)—not to protect them from harm that attends specific *locations*. Opening.Br.47. The Court's passing references to rallies and churches served only to illustrate categories of speech (like "religious tracts," *Brown*, 564 U.S. at 795 n.3); they were not an unprovoked broadside on a state's power to restrict minors from accessing certain places. And SB 351 does not seek to prevent children's "expos[ure]" to harmful "ideas," *Brown* at 564

U.S. 794; but to mitigate the harm associated with minors' presence on social media platforms, *see Comput. & Commc'ns Indus. Ass'n v. Uthmeier*, No. 25-11881, 2025 WL 3458571, at *7 (11th Cir. Nov. 25, 2025) (distinguishing *Brown* on this basis).

NetChoice insists that the law in *Brown*, like SB 351, "allowed minors to possess and play violent video games *with parental consent*." Resp.Br.15. But that's misleading: California's law prohibited the sale of the games to minors, full stop. A parent could not authorize such a sale, even if she could purchase the game *herself* and allow her child to play it. SB 351 empowers a parent to authorize independent action by a child; unlike the law in *Brown*, it does not require a parent to stand in the child's shoes.

NetChoice also argues that *Brown* necessarily extends to all state laws regulating commercial contracts because it concerned the sale of video games. *Id.* But there's a world of difference between a one-time, over-the-counter sale and a detailed, rights-waiving, indefinite contract granting access to a dangerous location. Opening.Br.36. Relatedly, NetChoice argues that SB 351 is not about contracts at all because the parental-consent provision does "not use the word 'contract.'" Resp.Br.16. But the age-verification and parental-consent provisions apply only to "[a]ccount holder[s]," O.C.G.A. § 39-6-1(1), and account creation

always requires users to enter a contract, Doc. 23-2 at 6. Anyway, the point in *Brown* was that, contract regulation or not, the challenged law directly discriminated against specific speech. SB 351 does not do that.

NetChoice also argues that SB 351 does not really regulate access to locations but to the protected speech *hosted* at those locations. Resp.Br.17. But that logic runs headlong into *Indigo Room*, which upheld an ordinance barring a minor from entering a place that served alcohol even when the minor wished to enter solely to attend "political events and activities" hosted there. 710 F.3d at 1297, 1300. Under NetChoice's reasoning, the ordinance's application in *Indigo Room* did not simply regulate access to a restricted location, but to "political speech" occurring within. *See id.* But this Court categorically rejected that illogic. *Id.*

At bottom, NetChoice insists that bars are just different from social media platforms. And at a high level of generality, that's certainly true: Facebook does not serve alcohol, so that particular risk to minors' safety is not present. But others are: Social media use by minors brings addiction, damage to mental health, sexual predation, and other pathologies. Opening.Br.7–10. And anyway, the minors in *Indigo Room* weren't looking for beer or wine. They wanted to access *speech*. And this Court upheld their exclusion

anyway, because the government may legislate to protect minors from the risk of harm inherent in certain locations *even if* a minor wants to enter to engage in First Amendment activity.

As such, *Indigo Room*'s reasoning is not limited to bars—it applies equally to locations more closely associated with protected speech. If violent gangs overran a park or library, a locality could bar minors from the area absent parental consent—even if those minors hoped to swap political or religious views amid the gunfire and illegal drug use. That parks and libraries are designed and intended to host protected speech would not transform the public safety ordinance into a speech restriction. Likewise, the fact that many minors (without parental consent) would *use* social media platforms to consume and communicate protected speech does not suddenly strip Georgia of its authority to protect them from digital locations that are dangerous for minors because of how they *function*—*i.e.*, as social media platforms.

Finally, NetChoice mischaracterizes *Packingham v. North Carolina*, 582 U.S. 98 (2017), as announcing a special right to "access" social media "free from governmental restraint." Resp.Br.6 (quotation omitted). But *Packingham* addressed a law "making it a felony for a registered sex offender to gain access" to social media sites, and it held that "to foreclose access to social

media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights." 582 U.S. at 101, 108. SB 351 does not do that, nor does its parental-consent provision exist to restrict minors' speech.

2. The age-verification and parental-consent provisions are content neutral.

Assuming SB 351 regulates speech, it does so on a content-neutral basis. A law is content based if it "discriminate[s] based on the topic discussed or the idea or message expressed." *City of Austin, Tex. v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 73–74 (2022) (quotation omitted). "The principal inquiry in determining content neutrality is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Uthmeier*, 2025 WL 3458571, at *4 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)) (ellipsis omitted). SB 351 does not single out any topic, idea, or message for discrimination; it certainly does not indicate disagreement with any message. It simply identifies certain websites that *function* in harmful ways. Opening.Br.38–41. NetChoice's own complaint alleges a minor could read the same content on a newspaper's website but not on Facebook. *See* Doc. 1 at 36. Just so: SB 351 concerns the functional platform with which minors

interact—not the content of speech shared on that platform. In short, it "does not restrict any *type* of speech, simply the *form* in which that speech is presented." *Uthmeier*, 2025 WL 3458571, at *5.

NetChoice contends that SB 351 is content based because its definition of a "social media platform" supposedly "exempts the State's favored entities based on the content they disseminate." Resp.Br.32. That is wrong: SB 351 draws content-neutral distinctions between websites with different functions.

SB 351 identifies the function of a covered "social media platform" as the site's provision of user profiles that enable users to upload their own posts "and interact publicly and privately with other account holders and users." O.C.G.A. § 39-6-1(6). By contrast, a site that publishes "[n]ews, sports, entertainment, *or other content* that is … *not user generated*," and whose "interactive functionality" is merely "incidental to or directly or indirectly related to such content," lacks the functions of a "social media platform." *Id.* § 39-6-1(6)(D) (emphases added). A platform defined by user-generated posting with virtually unrestricted interactivity poses unique dangers for children; sexual predators are far more likely to seek out potential victims on a platform like Instagram than in the restricted comments section of the *New*

York Times. *See* Doc. 23-1 at 13; Opening.Br.7–10. A law that classifies based on the risks to minors associated with websites' functions is content neutral. *See Uthmeier*, 2025 WL 3458571, at *4–5. Likewise, distinguishing user-generated and provider-selected content without targeting any underlying subject matter is not content-based (a point NetChoice does not meaningfully dispute). *See* Opening.Br.41–43.

No provision of SB 351 treats sites differently based on the content of the speech they host. Start with NetChoice's favorite language: SB 351's exclusion of sites that publish "[n]ews, sports, entertainment, or other content that is preselected" and provide limited "interactive functionality." O.C.G.A. § 39-6-1(6)(D). That only confirms that coverage under SB 351 turns on a website's functions, not its genre. The same is true of SB 351's other so-called "exceptions," which merely identify websites that do not function primarily through unrestrained interactivity between post-generating users. *See, e.g.*, *id.* § 39-6-1(6)(Q) (academic research sites where most content is "created or posted by the provider" and any interactive features are "directly related to the provider's content"). Again, the goal is protecting minors from the dangerous functionality of certain websites, *not* from disfavored topics or ideas. *See Uthmeier*, 2025 WL 3458571, at *5.

NetChoice argues that function cannot be a proxy for content, and that the government cannot regulate locations based on the content inside. Resp.Br.34. But SB 351 does not do that: The statute applies equally to all interactive, user-driven social media platforms—regardless of the "content they disseminate." *Id.* at 32. An interactive, user-driven platform dedicated to *any* topic—sports, politics, firearms, illegal drugs, etc.—is covered by SB 351. And a non-interactive, publisher-driven site dedicated to any of those same topics is *not* covered by SB 351.

If this Court concludes that SB 351 is unconstitutional because one of its discrete exceptions makes it content based, any relief should target the offending exception, not the entirety of SB 351. Opening.Br.50–51. NetChoice asserts without explanation that "there is nothing this Court could sever that would make the Act's operative speech restrictions valid." Resp.Br.36. But if an exception is the *reason* the law is content based and therefore unconstitutional, then severing that exception would leave an enforceable, constitutional statute on the books.

3. If it applies, both provisions pass intermediate scrutiny.

The age-verification and parental-consent provisions satisfy intermediate scrutiny because the State has an important interest

in protecting children that "would be achieved less effectively absent the regulation[s,]" which "do[] not burden substantially more speech than is necessary to further that interest." *Paxton*, 606 U.S. at 496 (quotation omitted).

Georgia has a "compelling interest in protecting the physical and psychological well-being of minors." *Sable Commc'ns of Cal., Inc. v. F.C.C.*, 492 U.S. 115, 126 (1989). Given the overwhelming evidence that social media platforms are harmful to minors, *see* Opening.Br.7–10, that "substantial interest" is plainly implicated here, *see Uthmeier*, 2025 WL 3458571, at *6 (explaining that Florida "has a compelling interest in protecting minors in general, and it has demonstrated that they are particularly susceptible to the potentially addictive features built into some social media platforms").

The State's interest would be served less effectively without SB 351. Parental involvement obviously helps mitigate the risks of social media use; if it didn't, the platforms would not tout their purported parental controls. *See, e.g.*, Resp.Br.5. Nor does SB 351 burden substantially more speech than necessary. The age-verification provision imposes only a "modest burden" on users' access to platforms, *Paxton*, 606 U.S. at 496, and no burden on any actual speech. The parental-consent provision burdens only

minors' ability to access platforms, and that burden is the similarly modest one of their parents completing an easy verification process. *See* Opening.Br.45.

NetChoice's intermediate scrutiny arguments are remarkable. It insists the State does not have *any* valid interest because there is no evidence that social media harms minors. Resp.Br.18–19. But the State produced exactly that—as the district court found, *see* Doc. 34 at 3–4, and as this Court found with respect to Florida's similar law (there's no reason to think the same websites affect Florida and Georgia minors differently), *see Uthmeier*, 2025 WL 3458571, at *6. NetChoice, like the tobacco lobbyists of yesteryear, insists that the State has proven correlation but not causation. Resp.Br.19. But the record vindicates this Court's commonsense judgment that "social media … pose[s] grave risks to children." *M.H. ex rel. C.H. v. Omegle.com LLC*, 122 F.4th 1266, 1268 (11th Cir. 2024); *see* Opening.Br.7–10. Indeed, one of NetChoice's own members tried to suppress its own research confirming as much. *See* Opening.Br.10.[1]

[1] NetChoice also argues that the evidence does not address every company covered by SB 351. But as NetChoice admits, the State need only show that SB 351 *generally* furthers its interest, not that it does so on a platform-by-platform or plaintiff-by-plaintiff basis. *See supra* at 7–8; *Edge Broad. Co.*, 509 U.S. at 430–31.

Turning from interest to burden, NetChoice argues that the age-verification provision burdens substantially more speech than necessary because it applies to adults too. Resp.Br.26. That's the same argument the Supreme Court rejected in *Paxton*, which held that online age verification imposes only a "modest burden" on a person accessing speech. 606 U.S. at 496. NetChoice deems *Paxton* irrelevant because it did not address access to "*fully protected* speech for both minors and adults." Resp.Br.26. But the speech at issue in *Paxton was* fully protected for the adults bearing the burden of age verification. That pornography is unprotected for children was relevant only to the Court's decision to apply intermediate instead of strict scrutiny, *see Paxton*, 606 U.S. at 493 & n.12, not its conclusion that age verification is only a "modest burden," *id.* at 496; *cf. Uthmeier*, 2025 WL 3458571, at *8 n.11 (explaining that *Paxton*'s "modest burden" holding turned on the ease of age verification using modern technology).

On the parental-consent provision, NetChoice argues that it fails intermediate scrutiny because it does not satisfy *strict* scrutiny principles. NetChoice faults the General Assembly for not applying SB 351 to *every* possible website that could be harmful to children. Resp.Br.19. Again, that is nearly identical to an argument rejected in *Paxton*, 606 U.S. at 498–99, and alleged

underinclusivity is irrelevant to intermediate scrutiny anyway, *see, e.g.*, *Wacko's Too, Inc. v. City of Jacksonville*, 134 F.4th 1178, 1189–90 (11th Cir. 2025). NetChoice similarly faults Georgia for not affirmatively disproving alternatives such as relying on existing parental controls. Resp.Br.21. But as *Paxton* confirms, SB 351 is not invalid just because Georgia "could adopt less restrictive means of protecting children, such as encouraging parents to install content-filtering software." 606 U.S. at 497–98.

At most, the parental-consent provision only indirectly burdens a minor's access to speech. There's no evidence that SB 351's burden is anything but negligible unless a parent *does not want* his child to enter contracts with social media platforms. And in that scenario, SB 351 simply empowers parental choice. NetChoice relies on dicta in footnote three of *Brown* to argue that *any* parental-consent provision is *per se* unconstitutional. Resp.Br.21. But that stretches *Brown* far past its breaking point, as the Attorney General has already explained. *See supra* at 12–13. To reiterate, the Court in *Brown* did not even address a parental-consent provision. Anyway, this Court has already rejected NetChoice's sweeping, *per se* view of *Brown* by holding that Florida is likely to prove that its own parental-consent provision is constitutional. *See Uthmeier*, 2025 WL 3458571, at

*7–8. Regardless of any differences between Florida's law and Georgia's, that holding is irreconcilable with NetChoice's theory that *Brown* categorically prohibits prior-parental-consent requirements.

B. The commercial reasonableness standard is not unconstitutionally vague.

SB 351's age-verification provision allows platforms to comply through "commercially reasonable efforts." O.C.G.A. § 39-6-2(a). Despite NetChoice never alleging, briefing, or otherwise asking it to do so, the district court ruled that the reasonableness standard renders the entire age-verification provision unconstitutionally vague. Doc. 34 at 43–44. That decision was improper because it went well beyond NetChoice's actual claims, and it was wrong because there's nothing unconstitutionally vague about reasonableness standards. Opening.Br.51–53.

NetChoice argues the commercially reasonable standard is vague because websites don't know "how precisely to verify the ages of their users." Resp.Br.24. Uncertainty about "precisely" how to do something does not make a law vague. Unconstitutional vagueness arises when a law cannot be meaningfully interpreted *at all*, not when it may present difficult edge cases. *E.g.*, *United States v. Williams*, 553 U.S. 285, 306 (2008); *Stardust, 3007 LLC*

v. City of Brookhaven, 899 F.3d 1164, 1176 (11th Cir. 2018). Besides, NetChoice elsewhere castigates the State for having produced evidence of what "could be commercially reasonable," Resp.Br.42—and that alone defeats any vagueness claim. NetChoice also ignores that the Fifth Circuit remanded a similar appeal for the express purpose of assessing applications of an identical "commercially reasonable efforts" standard—an impossible job if that standard is incomprehensibly vague. *Fitch*, 134 F.4th at 809. And NetChoice ignores that the law upheld in *Paxton* similarly allowed "a commercially reasonable method" of age verification. 606 U.S. at 467 (quotation omitted).

C. NetChoice identifies no reason to enjoin SB 351's ad provision.

SB 351 also prohibits the "display of any advertising in the minor account holder's account based on such minor account holder's personal information, except age and location." O.C.G.A. § 39-6-3(1). That violates neither § 230 nor the First Amendment.

1. The ad provision does not violate Section 230.

Section 230 shields social media platforms from tort-like liability arising "as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). But § 230 does not prevent states from enacting laws

which govern social media platforms' *own* conduct. And SB 351's ad provision regulates platforms' decisions, "independently of whether the third-party speech that [they] host harms anybody." *Free Speech Coal., Inc. v. Paxton*, 95 F.4th 263, 285 (5th Cir. 2024). That does not implicate § 230. *See* Opening.Br.53–55.

NetChoice's halfhearted § 230 argument posits that the ad provision is preempted "*to the extent* it requires websites to monitor for 'advertisements' in user-generated content." Resp.Br.45 (emphasis added). That "extent" is nonexistent: The provision does not require the screening or monitoring of user-generated content; nor does it impose liability for displaying any content. Liability arises only if the *platform* decides to *target* ads (or to allow users to target ads) at a minor based on the minor's personal information. Plainly, that provision does not treat platforms as speakers of third-party content, nor does it make them liable for the act of publishing ads.

2. The ad provision does not violate the First Amendment.

NetChoice alternatively argues that the ad provision violates the First Amendment by infringing its members' editorial discretion. Resp.Br.28–31. The district court did not reach this issue. And NetChoice's arguments go nowhere.

The ad provision does not regulate editorial discretion. Social media platforms engage in expressive activity when they make curation decisions to compile third-party speech. *See, e.g.*, *Moody*, 603 U.S. at 728. The "capstone" example of that kind of speech is a parade organizer selecting participants, all of which collectively reflect the "expressive content of the parade." *Id.* at 730 (quoting *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 572–73 (1995)) (alteration adopted); *id.* at 738–40 (platforms' expression consists of "combining multifarious voices to create a distinctive expressive offering") (quotation omitted). This all suggests that the First Amendment protects, *e.g.*, a website's decisions regarding whether to display ads, or to display ads for businesses but not politicians. By contrast, a platform's selection of data metrics for use in targeting minors is not an editorial decision used to compile an "expressive offering," *id.* at 738—it is a business decision designed to maximize the efficacy of online advertising.

At most, the ad provision regulates commercial speech, which the State may regulate to "directly advance[]" a "substantial" interest provided the law "is not more extensive than is necessary." *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 564, 566 (1980). The State has a

substantial interest in protecting children from the dangers of manipulative targeted advertising, which exacerbates all the problems that make social media harmful and addictive. *See supra* at 20; *Denver Area Educ. Telecomm's Consortium, Inc. v. FCC*, 518 U.S. 727, 755 (1996) ("protection of children is a compelling interest") (quotation omitted). The point of abusing minors' personal information to barrage them with ads is to overpower them and make them easier to manipulate—*i.e.*, to "keep users on devices and create new desires for products or services." Doc. 23-1 at 19. The ad provision directly advances the State's interest in preventing that harm.

On the flipside, the ad provision does not affect more speech than necessary. It does not restrict *any* content of any ads and says *nothing* about adults' accounts. *See Posadas de P.R. Assocs. v. Tourism Co. of P.R.*, 478 U.S. 328, 343–44 (1986) (prohibition on casino advertisements to Puerto Rico residents not "more extensive than necessary"). And ads can still be targeted toward minors based on their ages and locations. SB 351 bars only the use of hyper-specific personal data most likely to facilitate the harmful manipulation of children.[2]

[2] For the same reasons, if the ad provision regulates non-commercial speech, it is content-neutral and "advances important

NetChoice argues the ad provision is a content-based speech regulation because it targets "editorial control" based on the "content of personal information" (*i.e.*, all but age and location). Resp.Br.29 (quotation omitted). But that effort to convert a data-use restriction into a content regulation makes no sense: A user's personal information is not the *content* of any advertisement. Even if strict scrutiny applies, the ad provision satisfies it. Again, the protection of children is a compelling state interest. *See Denver*, 518 U.S. at 755. And the law is narrowly tailored because it impacts *only* minor account holders and does not prevent any category of advertising from appearing on minors' accounts. Minors can receive advertising, including for "pet-sitting, sports camps, or concerts," Resp.Br.30—they just cannot be *targeted* in the ways—and on the websites—that present the greatest risks.

D. NetChoice fails to show that facial relief is proper.

If nothing else, NetChoice cannot obtain facial relief. Opening.Br.55–58. Facial relief requires assessing all possible applications of SB 351 and deciding whether its unconstitutional applications substantially outweigh its constitutional ones.

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governmental interests unrelated to the suppression of free speech" without "burden[ing] substantially more speech than necessary." *TikTok Inc. v. Garland*, 604 U.S. 56, 70 (2025).

Moody, 603 U.S. at 723–26. The district court didn't do that, insisting without explanation that the constitutional analysis is the same in *every* application. Doc. 34 at 19; *but see Fitch*, 134 F.4th at 809; Opening.Br.55–58. A district court's failure to conduct a proper facial analysis requires vacatur of a preliminary injunction. *See In re Georgia Senate Bill 202*, 160 F.4th 1171, 1176–77 (11th Cir. 2025).

As explained, NetChoice tries to obtain facial relief by characterizing its case as one exclusively about social media users' undifferentiated right to *access* platforms—not the platforms' own rights. *See supra* at 3–4. In addition to foreclosing Article III standing, *see id.*, that framing does not help NetChoice on the merits. Even if this Court focuses solely on users' access rights, variation among platforms matters—in terms of the speech they host (*e.g.*, unprotected pornography); the controls they utilize to protect children from the dangerous functions of social media; and their compliance costs. *See id.*; Opening.Br.56–57.

NetChoice insists that it "does not matter whether there might be some small amount of unprotected speech on covered websites." Resp.Br.40. But what *does* matter is how each platform responds to the risk of harm associated with children's exposure to the dangerous aspects of social media use. The

presence of pornography (or other unprotected speech) on the platforms is merely one example. *Cf. Paxton*, 606 U.S. at 481 n.7. The risks to minors will vary platform to platform based on each company's policies and their efficacy. Neither the district court nor NetChoice have offered any analysis on that issue.

III. NetChoice cannot show irreparable harm or that the equities favor it.

Regardless of the merits, NetChoice is not entitled to injunctive relief. *See* Opening.Br.59–61. It delayed over a year after SB 351 was enacted to file this suit, undermining claims of irreparable harm. *Id.* at 59–60. NetChoice responds that it sued "two months before the Act took effect." Resp.Br.55. But NetChoice's theory of irreparable harm is that at least one of its members faces extraordinarily burdensome compliance costs. *Id.* And a request for preliminary relief to stave off such crippling costs does not wait until the eve of a statute's effective date—an incredibly risky dice roll after more than a year of delay.

Additionally, the State has the better of the equities. The "inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 585 U.S. 579, 603 n.17 (2018). "The public also has an interest in the protection of children and the enforcement of the State's law that seeks to do

just that." *Uthmeier*, 2025 WL 3458571, at *10. Conversely, "the compliance costs [NetChoice] might incur do not outweigh the State's interest in enforcing its lawful regulation." *Id.* at *9. Those considerations, among others, led this Court to stay a preliminary injunction of Florida's similar law pending appeal. *See id.* at *10.

NetChoice also tries to distinguish the Supreme Court's refusal to reinstate a preliminary injunction in *NetChoice, LLC v. Fitch*, 145 S. Ct. 2658 (2025), arguing that things "have changed" since then because two websites stopped disseminating speech in Mississippi and Tennessee. Resp.Br.56. But those possibilities were apparent beforehand. And NetChoice does not argue that lifting the injunctions in those other states inflicted the irreparable compliance costs it claims are dispositive here.

CONCLUSION

For the reasons set out above, this Court should reverse the judgment of the district court.

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 6,494 words as counted by the word-processing system used to prepare the document.

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CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2026, I served this brief by electronically filing it with this Court's ECF system, which constitutes service on all attorneys who have appeared in this case and are registered to use the ECF system.

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