

Nos. 22-277, 22-555

IN THE
Supreme Court of the United States

ASHLEY MOODY, Attorney General of Florida, et al.,
Petitioners,

v.

NETCHOICE, LLC, dba NetChoice, et al.,
Respondents.

NETCHOICE, LLC, dba NetChoice, et al.,
Petitioners,

v.

KEN PAXTON, Attorney General of Texas,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS
FOR THE FIFTH AND ELEVENTH CIRCUITS

**BRIEF FOR STATES OF NEW YORK, ARIZONA, CALIFORNIA,
COLORADO, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, MAINE,
MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA,
NEW JERSEY, NORTH CAROLINA, OREGON, RHODE ISLAND,
VERMONT, WASHINGTON, AND WISCONSIN, AND THE DISTRICT OF
COLUMBIA AS AMICI CURIAE IN SUPPORT OF NEITHER PARTY**

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INTERESTS OF AMICI CURIAE

In 2021, Florida and Texas enacted laws regulating large social media platforms. Both laws restrict the platforms' ability to engage in content moderation and impose certain other requirements on the platforms. The laws were immediately challenged by NetChoice, LLC, and the Computer Communications Industry Association (together, "NetChoice"), trade associations representing the platforms.¹ The Eleventh Circuit enjoined the enforcement of key provisions of Florida's law, concluding that the platforms' content moderation decisions were protected by the First Amendment. (*NetChoice, LLC v. Moody* Pet. App. 18a-19a.) The Fifth Circuit rejected that view, reasoning instead that the platforms' content moderation decisions were unprotected by the First Amendment. (*Paxton v. NetChoice, LLC* Pet. App. 9a.)

Amici curiae States of New York, Arizona, California, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin, and the District of Columbia, share Florida's and Texas's concern with an issue of "great importance": the manner in which "[s]ocial media platforms have transformed the way people communicate with each other." *NetChoice, LLC v. Paxton*, 142 S. Ct. 1715, 1716 (2022) (Alito, J., dissenting). In particular, amici States have significant interests in regulating these platforms to protect their citizens. Among other things, States

¹ NetChoice, LLC, and the Computer Communications Industry Association are respondents in *Moody v. NetChoice, LLC*, No. 22-277, and petitioners in *NetChoice, LLC v. Paxton*, No. 22-555.

have a compelling interest in protecting minors from the risks of social media, including social media's negative effect on minors' psychological well-being and the danger that minors will fall victim to scams and other hazards on social media. States also have important interests in preventing the use of social media in criminal activity like the illegal distribution of fentanyl, the proliferation of child sexual abuse materials, and the facilitation of human trafficking. Although States have reached different conclusions about exactly how to regulate social media platforms, and amici States have different views about the substance of the challenged Texas and Florida laws, they share a strong interest in preserving their sovereign authority to regulate social media platforms.

Accordingly, amici States submit this brief in support of neither party, principally to explain that any decision interpreting the First Amendment to foreclose most regulation of social media platforms would undermine States' important objectives. Amici therefore urge this Court to make clear that States may regulate social media platforms consistent with the First Amendment.

SUMMARY OF ARGUMENT

Social media platforms present significant, diverse, and ever-changing risks to amici States' citizens. Consistent with their duty to protect the safety and well-being of their citizens, amici States have taken a variety of actions to regulate social media platforms to prevent harm to their citizens.

For example, many States have acted to protect the physical and psychological well-being of minors from the risks posed by social media. States have enacted legislation placing limits on the targeting of content or

advertising to minors. States have also enacted provisions to allow parents to set limits on minors' social media use. Most recently, a bipartisan coalition of thirty-three States filed a federal lawsuit against Meta, the owner of Facebook and Instagram, alleging that Meta knowingly designed and deployed features on Instagram and Facebook that are particularly harmful to young users, and that these platforms routinely collect data on users under thirteen without obtaining parental consent, in violation of federal law. Eight States and the District of Columbia filed similar individual lawsuits.

Another way in which States have acted to protect their citizens from risks posed by social media is by enacting and enforcing consumer privacy protection laws. These laws, when applied to social media platforms, allow consumers to control whether and how their personal information is collected and used. Similarly, state-enacted transparency requirements applicable to social media platforms arm consumers with knowledge about a platforms' policies and practices.

Preventing criminal activity on social media platforms is another significant area of state regulation. States have acted to combat the use of social media to facilitate human trafficking and the spread of child sexual abuse material. States have also devoted resources to examining the use of social media to sell and distribute fentanyl and other opioids, and the role of social media in hate-motivated mass shootings like the May 2022 shooting in Buffalo, New York.

As these examples show, States across the political spectrum share concerns about the effects of social media on their citizens, and they have responded with a wide variety of regulatory and enforcement actions.

The nature of these actions varies because social media platforms provide many different services. NetChoice’s argument that the Court should apply heightened scrutiny to virtually any regulation or enforcement action would jeopardize the States’ important efforts to protect their citizens. Instead of adopting NetChoice’s approach, which would effectively immunize platforms from regulation, the Court should carefully consider the unique regulatory challenge posed by social media platforms and adopt a nuanced approach that acknowledges that there is no “one size fits all” First Amendment analysis of state regulation of social media platforms. Some regulations target conduct, and many of these regulations have little, if any, effect on speech. Even where a regulation does implicate the First Amendment, it may apply only to commercial speech or regulate in a content-neutral way. The appropriate level of scrutiny will vary depending on the nature of the regulation.

The Court should also recognize amici States’ diverse—and critical—interests in regulating social media platforms to protect their citizens, including interests distinct from the specific interests asserted by Texas and Florida here. For example, States have a compelling interest in preserving the psychological well-being of minors in the face of documented harms caused by unregulated use of social media. Likewise, States have important interests in ensuring citizens’ privacy and providing citizens with the information necessary to make informed decisions about the use of social media platforms. Finally, States have a compelling interest in protecting public safety through law enforcement, which requires some regulation of social media platforms.

As States work to vindicate their shared interests in protecting their citizens from the unique risks posed by social media platforms, the Court should scrupulously avoid an interpretation of the First Amendment that effectively immunizes platforms from meaningful regulation.

ARGUMENT

I. STATES HAVE TAKEN ACTION TO PROTECT THEIR CITIZENS FROM VARIOUS HARMS CAUSED BY SOCIAL MEDIA.

Since the advent of social media, States have worked diligently to protect their citizens from the risks posed by social media platforms. States' approach to regulating these platforms continues to adapt as new harms become apparent. Many States have recently enacted legislation or are actively considering legislation to address new challenges. A decision from this Court that forecloses many potential avenues of regulation would call a premature halt to States' ongoing efforts in this area.

A. Protections for Minors

The use of social media presents a well-documented and profound risk of harm to minors' safety and well-being.² Minors spend a substantial amount of time on social media, which may be due in part to features that drive addictive behavior.³ For example, ninety-five percent of minors ages thirteen to seventeen use at least

² U.S. Surgeon Gen., Advisory, *Social Media and Youth Mental Health* (2023).

³ See, e.g., Julie Jargon, *TikTok Brain Explained: Why Some Kids Seem Hooked on Social Video Feeds*, *Wall St. J.* (Apr. 2, 2022).

one social media platform, with more than a third reporting that they use one of the top five social media platforms “almost constantly.”⁴ Fifty-four percent of users in this age group say that it would be hard to stop using social media.⁵ More than a third of children ages eight to twelve also regularly use social media.⁶ Minors interact with social media at a time when their brains are still developing, exacerbating the risks of use.⁷

More time spent on social media predicts a decrease in life satisfaction for minor users, with the most significant effects on males fourteen to fifteen years old and females eleven to thirteen years old.⁸ According to one study, twelve to fifteen-year-olds who spent more than three hours per day using social media increased their risk of poor mental health outcomes, including symptoms of depression and anxiety, compared to those who spent less than thirty minutes per day using social media.⁹ The introduction of a major social media platform caused a nine percent increase in depression and a twelve percent increase in anxiety, over baseline, in a

⁴ Emily A. Vogels et al., *Pew Rsch. Ctr., Teens, Social Media and Technology 2022* (Aug. 10, 2022).

⁵ *Id.*

⁶ Common Sense Media, *The Common Sense Consensus: Media Use by Tweens and Teens* 5 (2021).

⁷ Maria T. Maza et al., *Association of Habitual Checking Behaviors on Social Media with Longitudinal Functional Brain Development*, 177 *JAMA Pediatrics* 160 (2023).

⁸ Amy Orben, *Windows of Developmental Sensitivity to Social Media*, 13 *Nature Commc'ns* no. 1649, at 5 (2022); see also Jean M. Twenge & W. Keith Campbell, *Digital Media Use Is Linked to Lower Psychological Well-Being: Evidence from Three Datasets*, 90 *Psychiatric Q.* 311, 327 (2019).

⁹ Kira E. Riehm, *Associations Between Time Spent Using Social Media and Internalizing and Externalizing Problems Among US Youth*, 76 *JAMA Psychiatry* 1266, 1269-70 (2019).

study of college-aged users.¹⁰ Conversely, studies have shown that a reduction in the use of social media can improve mental health. For example, reducing social media use to thirty minutes per day had a significant positive impact on well-being, decreasing symptoms of loneliness and depression.¹¹

Extensive use of social media is correlated with unhealthy behaviors in minors, including disordered eating and unhealthy sleep patterns,¹² and negative outcomes, including online harassment, low self-esteem, and poor body image.¹³ Minors are also particularly vulnerable to fraud and other criminal activity on social media.¹⁴

In response to these serious and well-documented harms, at least eleven States have enacted bills or adopted resolutions to regulate social media with

¹⁰ [Luca Braghieri et al., *Social Media and Mental Health*, 112 *Am. Econ. Rev.* 3660, 3674 \(2022\).](#)

¹¹ [Melissa G. Hunt et al., *No More FOMO: Limiting Social Media Decreases Loneliness and Depression*, 37 *J. of Soc. & Clinical Psych.* 751, 763 \(2018\).](#)

¹² [Grace Holland et al., *A Systematic Review of the Impact of the Use of Social Networking Sites on Body Image and Disordered Eating Outcomes*, 17 *Body Image* 100, 108 \(June 2016\); Holly Scott et al., *Social Media Use and Adolescent Sleep Patterns: Cross-Sectional Findings from the UK Millennium Cohort Study*, 9 *British Med. J.* Open no. e031161, at 4-7 \(2019\).](#)

¹³ [Yvonne Kelly et al., *Social Media Use and Adolescent Mental Health: Findings from the UK Millennium Cohort Study*, *eClinicalMedicine* 59, 62 \(2019\).](#)

¹⁴ [See, e.g., Cordilia James & Julie Jargon, *Social-Media Shopping Scams Are Growing. Young Adults Are the Targets*, *Wall St. J.* \(Apr. 29, 2023\); Julie Jargon, *Teen Boys Are Falling for a Snapchat Nude-Photo Scam. Here's How to Avoid It*, *Wall St. J.* \(Nov. 18, 2023\).](#)

respect to its minor users.¹⁵ Thirty-five States were considering similar legislation in 2023.¹⁶ For example, four States have enacted legislation placing limits on the collection of personal information from minors, as well as the targeting of content or advertisements to minors, which contribute to the amount of time spent by minors on social media.¹⁷ At least eight additional States had similar legislation under consideration in 2023.¹⁸ Arkansas, Louisiana, and Utah have also

¹⁵ Nat'l Conf. of State Legislatures, *Social Media and Children 2023 Legislation* (Aug. 10, 2023).

¹⁶ *Id.*

¹⁷ See, e.g., Cal. Civ. Code § 1798.99.31(b)(3)-(4) (operative July 1, 2024) (prohibiting collection and use of personal information from minors for purpose other than provision of service) (*enjoined by NetChoice, LLC v. Bonta*, No. 22-cv-08861-BLF (N.D. Cal. Sept. 18, 2023), *appeal pending*, No. 23-2969 (Oct. 18, 2023 9th Cir.)); Del. Code Ann. tit. 6, § 1204C (prohibiting targeted advertising of specific products to minors based on personal information); La. Stat. Ann. § 51:1753(2) (effective July 1, 2024) (prohibiting targeted advertising to minors based on personal information); Utah Code Ann. § 13-63-103(3)-(5) (effective Mar. 1, 2024) (prohibiting collection of personal information, targeted content, and all advertising to minors).

¹⁸ H. 3880, 103d Gen. Assemb. § 10(b)(3)-(4) (Ill. 2023) (prohibiting collection and use of personal information from minors for purpose other than provision of service); H.F. 712, 90th Gen. Assemb. § 2 (Iowa 2023) (prohibiting collection of personal information from minors without parental consent); H.B. 80, 193d Gen. Ct. § 1 (Mass. 2023) (prohibiting targeted advertising of specific products to minors); H.F. 2257, 93d Leg. § 5(3)(2)-(3) (Minn. 2023) (prohibiting collection and use of personal information from minors for purpose other than provision of service); A. 4919, 220th Leg. § 5(b)-(c) (N.J. 2023) (prohibiting collection and use of personal information from minors for purpose other than provision of service); S. 3281, 246th Sess. § 4 (N.Y. 2023) (prohibiting collection

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enacted laws requiring parental consent for the creation of a social media account.¹⁹ Moreover, Louisiana, New York, Utah, and Wisconsin have enacted or are considering laws providing additional protections for minor users, such as laws preventing users who are unconnected to the minor’s account from directly messaging the minor,²⁰ or limiting the use of a minor’s account during nighttime hours.²¹ And some States

of personal information from minors and targeted advertising to minors without parental consent); S. 7694, 246th Sess. § 2 (N.Y. 2023) (prohibiting addictive targeting of content to minors without parental consent); H. 644, 2023-2024 Gen. Assemb. § 1 (N.C. 2023) (prohibiting targeting of content or advertising to minors based on personal information); A. 373, 2023-2024 Leg. § 1 (Wis. 2023) (prohibiting collection of personal information from minors, targeted content, and all advertising).

¹⁹ See Ark. Code Ann. § 4-88-1402 (requiring parental consent for users under eighteen) (*enjoined by NetChoice, LLC v. Griffin*, No. 5:23-cv-05105 (W.D. Ark. Aug. 31, 2023)); La. Stat. Ann. § 51:1752(B) (effective July 1, 2024) (requiring parental consent for users under sixteen); Utah Code Ann. § 13-63-102 (effective Mar. 1, 2024) (requiring parental consent for users under eighteen); *see also* A. 373, 2023-2024 Leg. § 1 (Wis. 2023) (designating accounts for users under eighteen as “youth accounts” with specific protections unless parent consents to removal of designation).

²⁰ See La. Stat. Ann. § 51:1753(1) (effective July 1, 2024); Utah Code Ann. § 13-63-103(1) (operative Mar. 1, 2024); A. 373, 2023-2024 Leg. § 1 (Wis. 2023).

²¹ See Utah Code Ann. § 13-63-105(1) (operative Mar. 1, 2024) (prohibiting access to minor accounts from 10:30 p.m. to 6:30 a.m.); S. 7694, 246th Sess. § 1 (N.Y. 2023) (prohibiting notifications from minor’s account between 12:00 a.m. and 6:00 a.m. without parental consent); A. 373, 2023-2024 Leg. § 1 (Wis. 2023) (prohibiting access to youth accounts from 10:00 p.m. to 7:00 a.m.).

have enacted or are considering laws that would allow parents to set time limits on the use of minor accounts.²²

Several recent laws are also aimed at obtaining a more complete understanding of the aspects of social media that are particularly damaging to minors. To that end, California, Illinois, Minnesota, New Jersey, and New York have enacted or are considering laws requiring social media platforms to perform a data impact assessment to determine the risks of products and services targeted to or likely to be accessed by minors.²³ California, Illinois, New Jersey, and North Carolina have also enacted or are considering legislation creating working groups or funding studies on the impact of social media and other online services on minors.²⁴

²² See Utah Code Ann. § 13-63-105(3) (operative Mar. 1, 2024); S. 7694, 246th Sess. § 1 (N.Y. 2023); A. 373, 2023-2024 Leg. § 1 (Wis. 2023).

²³ See Cal. Civ. Code § 1798.99.31(a)(1) (effective July 1, 2024) (*enjoined by NetChoice, LLC v. Bonta*, No. 22-cv-08861-BLF (N.D. Cal. Sept. 18, 2023), *appeal pending*, No. 23-2969 (Oct. 18, 2023 9th Cir.)); H. 3880, 103d Gen. Assemb. § 10(a)(1) (Ill. 2023); H.F. 2257, 93d Leg. § 5(1)(1) (Minn. 2023); A. 4919, 220th Leg. § 2(a) (N.J. 2023); S. 3281, 246th Sess. § 4 (N.Y. 2023).

²⁴ See Cal. Civ. Code § 1798.99.32 (effective July 1, 2024) (*enjoined by NetChoice, LLC v. Bonta*, No. 22-cv-08861-BLF (N.D. Cal. Sept. 18, 2023), *appeal pending*, No. 23-2969 (Oct. 18, 2023 9th Cir.)); Ch. 126, 2023 N.J. Laws; H. 3880, 103d Gen. Assemb. § 15 (Ill. 2023); H. 644, 2023-2024 Gen. Assemb. § 1 (N.C. 2023). And Illinois and New Jersey have urged the passage of federal legislation protecting minors from harmful social media algorithms and requiring parental consent for children under thirteen years of age to open social media accounts. See S. Res. 249, 103d Gen. Assemb. (Ill. 2023) (harmful algorithms); A. Res. 167, 220th Leg. (N.J. 2022) (parental consent).

In addition to these laws and regulations, States have pursued advocacy and enforcement actions to protect minors from harms caused by social media. For example, in 2021, forty-four States and territories called on Meta to abandon its plans to launch a version of Instagram for children under thirteen.²⁵ The following year, forty-three States and territories sent letters to TikTok and Snapchat requesting that they make their platforms compatible with widely used parental control mechanisms.²⁶ And fifty-two States and territories expressed support for the U.S. Senate’s 2021 investigation of the impact of Facebook’s and Instagram’s algorithms on minors’ mental health.²⁷

Most recently, a bipartisan coalition of thirty-three States filed a federal lawsuit against Meta, the owner of Facebook and Instagram. The States allege that Meta knowingly designed and deployed harmful features on Instagram and Facebook, including features that addict young users to the platforms, and routinely collected data on users under thirteen without obtaining parental consent.²⁸ Eight additional States and the District of Columbia filed similar individual lawsuits against Meta.²⁹ States have opened a similar investigation into

²⁵ [Letter from Att’ys Gen. to Mark Zuckerberg, Chief Exec. Officer, Facebook, Inc. \(May 10, 2021\).](#)

²⁶ [Letter from Att’ys Gen. to Matthew Penarczyk, Head of Legal, Americas, TikTok, Inc., Michael O’Sullivan, Gen. Counsel, Snapchat \(Mar. 28, 2022\).](#)

²⁷ [Letter from Att’ys Gen. to U.S. Senate Subcomm. on Consumer Prot., Prod. Safety, and Data Sec. \(Oct. 4, 2021\).](#)

²⁸ [Complaint, *Arizona v. Meta Platforms, Inc.*, No. 4:23-cv-05488 \(N.D. Cal. Oct. 24, 2023\).](#)

²⁹ [Barbara Ortutay, *States Sue Meta Claiming Its Social Platforms Are Addictive and Harm Children’s Mental Health*, AP News \(Oct. 24, 2023\).](#)

TikTok to determine whether the platform engaged in deceptive practices that harmed minors' mental health.³⁰ That investigation is ongoing.

B. Privacy and Transparency Requirements

Social media platforms threaten users' privacy in a number of ways. Platforms offer users settings and policies that are difficult to interpret, permitting platforms to undermine users' privacy preferences by sharing personal information with third parties.³¹ Social media platforms may also fail to adequately protect collected personal information from illegal hacking.³² And personal information collected by social media platforms can be used to discriminate against users. For example, social media platforms may permit advertisers to request that their advertisements not be shown to certain groups, identified using personal information collected and stored by the platform. This practice can facilitate discriminatory housing and employment practices.³³

In response to data breaches and reports of misuse of consumer information, many States have enacted

³⁰ [David Shepardson, *State AGs Demand TikTok Comply with US Consumer Protection Investigations*, Reuters \(Mar. 6, 2023\)](#).

³¹ [See, e.g., Press Release, Fed. Trade Comm'n, FTC Imposes \\$5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook \(July 24, 2019\)](#).

³² [See, e.g., Press Release, Fed. Trade Comm'n, FTC Accepts Final Settlement with Twitter for Failure to Safeguard Personal Information \(Mar. 11, 2011\)](#).

³³ [See Julia Angwin & Terry Parris, Jr., *Facebook Lets Advertisers Exclude Users by Race*, ProPublica \(Oct. 28, 2016\)](#); [Julia Angwin et al., *Facebook \(Still\) Letting Housing Advertisers Exclude*](#)

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consumer privacy protection laws that allow individuals to control their personal information. These laws apply broadly, including to social media platforms, which are among the primary collectors of consumers' personal information. For example, at least ten States have enacted laws requiring regulated entities to provide a mechanism to opt out of the sale or sharing of personal information or the processing of personal information for targeted advertising.³⁴ Likewise, Illinois and Washington prohibit commercial entities that collect biometric data, including social media platforms, from collecting such data without the user's consent.³⁵

Consistent with their efforts to protect minors (see *supra* at 5-12), many States have enacted provisions providing heightened privacy protections for minors. For example, California has enacted a law requiring services that collect personal information to provide a

Users by Race, ProPublica (Nov. 21, 2017); *Julia Angwin et al., Facebook Job Ads Raise Concerns About Job Discrimination*, N.Y. Times (Dec. 20, 2017).

³⁴ See Cal. Civ. Code § 1798.120–.121; Colo. Rev. Stat. Ann. § 6-1-1306(1)(a); Conn. Gen. Stat. Ann. § 42-520(d); Ind. Code Ann. § 24-15-3-1(1)(b)(5) (effective Jan. 1, 2026); Iowa Code § 715D.4(6) (effective Jan. 1, 2025); Nev. Rev. Stat. Ann. § 603A.345; Ch. 369, § 3(1)(d), 2023 Or. Laws, p.5 (effective July 1, 2024); Ch. 408, § 2, 2023 Tenn. Pub. Acts, p.6 (effective July 1, 2025); Utah Code Ann. § 13-61-302(1)(b); Va. Code Ann. § 59.1-578(D). Many of these States also require services to accept consumer requests to delete their personal information. See Cal. Civ. Code § 1798.105; Colo. Rev. Stat. Ann. § 6-1-1306(1)(d); Conn. Gen. Stat. Ann. § 42-518(a)(3); Iowa Code § 715D.3(1)(b) (effective Jan. 1, 2025); Ch. 369, § 3(1)(c), 2023 Or. Laws, p. 5 (effective July 1, 2024); Ch. 408 § 2, 2023 Tenn. Pub. Acts, pp. 6-7 (effective July 1, 2025).

³⁵ See 740 Ill. Comp. Stat. 14/15(e); Wash. Rev. Code § 19.375.020(3).

high default level of privacy to minors.³⁶ Illinois, Minnesota, New Jersey, and New York had similar provisions under consideration in 2023.³⁷ Colorado requires affirmative parental consent and a data impact assessment before the personal information of consumers under thirteen may be processed.³⁸ Connecticut imposes similar requirements.³⁹

To further empower consumers, some States have also imposed transparency requirements, which inform consumers about the services and products they use and help States craft effective regulations. For example, California has enacted a law requiring social media platforms to post terms of service and acceptable use policies; a similar provision is under consideration in New York.⁴⁰ In addition, New York has enacted a law

³⁶ See Cal. Civ. Code § 1798.99.31(a)(6) (effective July 1, 2024) (*enjoined by NetChoice, LLC v. Bonta*, No. 22-cv-08861-BLF (N.D. Cal. Sept. 18, 2023), *appeal pending*, No. 23-2969 (Oct. 18, 2023 9th Cir.)).

³⁷ See H. 3880, 103d Gen. Assemb. § 10(a)(6) (Ill. 2023); H.F. 2257, 93d Leg. § 5(1)(7) (Minn. 2023); A. 4919, 220th Leg. § 2(d) (N.J. 2023); S. 3281, 246th Sess. § 4(a) (N.Y. 2023).

³⁸ See Colo. Rev. Stat. Ann. §§ 6-1-1303(24)(c), 6-1-1308(7), 6-1-1309.

³⁹ See Conn. Gen. Stat. Ann. §§ 42-515(38)(D), 42-520(a)(4), 42-522(a)(4).

⁴⁰ See Cal. Bus. & Prof. Code § 22676; A. 6789A, 246th Sess. § 1 (N.Y. 2023). Similar provisions in Florida's and Texas's laws were upheld in the decisions below. (*See Moody* Pet. App. 62a-64a; *Paxton* Pet. App. 91a-95a.) This Court has denied NetChoice's petition for certiorari as to these holdings. *Compare NetChoice, LLC v. Paxton*, No. 22-555, 2023 WL 6319650 (U.S. Sept. 29, 2023), and *Moody v. NetChoice, LLC*, No. 22-277, 2023 WL 6319654 (U.S. Sept. 29, 2023), and Br. for the United States as Amicus Curiae at 12-19, Nos. 22-277, 22-393, and 22-555 (filed Aug. 2023), with *NetChoice, LLC v. Moody*, No. 22-393, 143 S. Ct. 744 (U.S. Sept. 29, 2023).

requiring social media platforms to inform users how the platform responds to reports of hateful conduct,⁴¹ and is considering legislation requiring products or services targeted towards children to prominently display a policy and terms of service warning about the potential risks of using the service for children.⁴²

Many States also require social media platforms to post policies on specific topics of importance to consumers. For example, consistent with their commitment to protecting consumer privacy, many States have enacted laws requiring services that collect personal information, including social media platforms, to publicly post privacy policies or disclose to consumers the categories of information that they collect.⁴³ Illinois also requires commercial entities that retain biometric data to disclose a policy regarding the retention and destruction of such data.⁴⁴

Likewise, some States have enforced their generally applicable transparency standards with respect to social

⁴¹ See N.Y. Gen. Bus. Law § 394-ccc(3) (*enjoined by Volokh v. James*, 656 F. Supp. 3d 431 (S.D.N.Y. 2023), *appeal pending*, No. 23-356 (Mar. 13, 2023 2d Cir.)).

⁴² See S. 3281, 246th Sess. § 4 (N.Y. 2023).

⁴³ See Cal. Civ. Code § 1798.100(a); Colo. Rev. Stat. Ann. § 6-1-1308(1)(a); Conn. Gen. Stat. Ann. § 42-520(c); Del. Code Ann. tit. 6, § 1205C(a)-(b); Ind. Code Ann. § 24-15-4-3 (effective Jan. 1, 2026); Iowa Code § 715D.4(5) (effective Jan. 1, 2025); Nev. Rev. Stat. Ann. § 603A.340(1); Ch. 369, § 12, 2023 Or. Laws, p. 12 (effective July 1, 2024); Ch. 408, § 2, Tenn. Pub. Acts, pp. 7-8 (effective July 1, 2025); Utah Code Ann. § 13-61-302(1)(a); Va. Code Ann. § 59.1-578(C). See also H. 644, 2023-2024 Gen. Assemb. § 1 (N.C. 2023) (requiring social media platforms to post policy of less than 250 words indicating how personal information will be used by the platform).

⁴⁴ See 740 Ill. Comp. Stat. 14/15(a).

media platforms. Washington, for example, requires digital platforms that sell and host campaign advertisements to make information about those advertisements available to the public and has successfully pursued enforcement actions against Facebook and Google for failing to comply with these standards.⁴⁵ Similarly, the District of Columbia successfully enforced a subpoena seeking information about Facebook's policies pursuant to the District's Consumer Protection Procedures Act.⁴⁶

C. Criminal Law Enforcement

Social media platforms have also played a key role in enabling criminal activity and exacerbating its harms. For example, it is well documented that social media facilitates human trafficking and the spread of child sexual abuse material. Survey results indicate that fifteen percent of minors have experienced some form of sexual abuse online.⁴⁷ Many victims of sex trafficking are recruited via popular social media platforms.⁴⁸ The internet and social media platforms are also the primary methods traffickers use to solicit buy-

⁴⁵ See Wash. Admin. Code § 390-18-050; [Press Release, Wash. Off. of the Att'y Gen., Judge Grants AG Ferguson's Request For Maximum \\$24.6M Penalty Against Facebook Parent Meta \(Oct. 26, 2022\)](#); [Press Release, Wash. Off. of the Att'y Gen., AG Ferguson: Google Will Pay More Than \\$423,000 Over Repeated Violations of Washington Campaign Finance Law \(June 17, 2021\)](#).

⁴⁶ *Meta Platforms, Inc. v. District of Columbia*, 301 A.3d 740 (D.C. 2023); see D.C. Code § 28-3910.

⁴⁷ [David Finkelhor et al., Prevalence of Online Sexual Offenses Against Children in the US, 5 JAMA Network Open no. e2234771, at 6 \(Oct. 14, 2022\)](#).

⁴⁸ [Human Trafficking Inst., Federal Human Trafficking Report, 2022, at 60 \(2023\)](#); see also [Katie McQue & Mei-Ling McNamara, How Facebook and Instagram Became Marketplaces for Child Sex Trafficking, The Guardian \(Apr. 27, 2023\)](#).

ers.⁴⁹ And as this Court has recognized, “[b]ecause child pornography is now traded with ease on the Internet, the number of still images and videos memorializing the sexual assault and other sexual exploitation of children, many very young in age, has grown exponentially.” *Paroline v. United States*, 572 U.S. 434, 440 (2014) (quotation marks omitted). This problem has continued to grow, with reports of suspected child exploitation increasing thirty-five percent from 2020 to 2021.⁵⁰

In addition, social media platforms are widely used in the distribution and sale of illegal drugs, including fentanyl and other opioids. Fentanyl, which is a leading cause of preventable death for those age eighteen to forty-five,⁵¹ is commonly found in counterfeit prescription drug pills for sale on social media, often in potentially lethal doses.⁵² For example, between May and September 2022, of the 390 drug poisoning investigations conducted by the federal Drug Enforcement Agency, 129 poisonings had direct ties to social media.⁵³ One report found that purchasing fentanyl on social

⁴⁹ Human Trafficking Inst., *Federal Human Trafficking Report*, *supra*, at 66, 68.

⁵⁰ U.S. Gov’t Accountability Off., GAO-23-105260, *Online Exploitation of Children: Department of Justice Leadership and Updated National Strategy Needed to Address Challenges 1* (2022); see also Michael H. Keller & Gabriel J.X. Dance, *The Internet Is Overrun With Images of Child Sexual Abuse. What Went Wrong?*, N.Y. Times (Sept. 29, 2019).

⁵¹ Colo. Off. of the Att’y Gen., *Social Media, Fentanyl & Illegal Drug Sales 7* (Mar. 2023).

⁵² *Id.* at 7, 26-28.

⁵³ *Id.* at 38; Devlin Barrett, *Poison Pill: How Fentanyl Killed a 17-Year-Old*, Wash. Post (Nov. 30, 2022); See Jan Hoffman, *Fentanyl Tainted Pills Bought on Social Media Cause Youth Drug Deaths to Soar*, N.Y. Times (May 19, 2022).

media “is nearly as convenient as using one’s phone to order a pizza or call an Uber.”⁵⁴

In addition, mass shooters have used social media to plan their crimes and promote hate-motivated violence. For example, the perpetrator of a May 2022 mass shooting in Buffalo, New York, was radicalized by exposure to violent and extremist content online⁵⁵ and livestreamed his attack on social media “to increase coverage.”⁵⁶ Although the shooter’s livestream was interrupted after two minutes, in the weeks after his attack, the video and the shooter’s writing spread rapidly on major social media platforms.⁵⁷

States have taken action to address these grave problems. For example, California has enacted legislation enabling victims of child sexual abuse to report material depicting their abuse to social media platforms. The law requires platforms to permanently remove the material and makes them liable to victims for failing to act.⁵⁸ In September 2023, fifty-four States and territories called on Congress to establish a commission to study the use of artificial intelligence to generate child sexual abuse materials, a practice that is proliferating rapidly on social media.⁵⁹

⁵⁴ Colo. Off. of the Att’y Gen., *Social Media*, *supra*, at 9.

⁵⁵ N.Y. Off. of the Att’y Gen., *Investigative Report on the Role of Online Platforms in the Tragic Mass Shooting in Buffalo on May 14, 2022*, at 23-33 (Oct. 18, 2022).

⁵⁶ *Id.* at 31.

⁵⁷ *Id.* at 33, 35-37.

⁵⁸ See Cal. Civ. Code § 3273.65–.67 (operative Jan. 1, 2025).

⁵⁹ Letter from Att’y Gen. to U.S. Senate (Sept. 5, 2023); see Miles Klee, *An AI Nightmare Has Arrived for Twitter — And the FBI*, *Rolling Stone* (Oct. 17, 2023).

Other States have devoted resources to examining the connection between human trafficking and social media,⁶⁰ the use of social media to sell and distribute fentanyl and other opioids,⁶¹ and the role of social media in hate-motivated mass shootings.⁶² For example, a report following the Buffalo mass shooting documented the shooter's increasing radicalization through social media platforms and recommended steps to prevent future online radicalization and dissemination of violent criminal activity.⁶³ Similarly, a study in Colorado documented the ready availability of fentanyl and other opioids for sale on social media platforms and recommended policy and legislative solutions, including regulation of social media platforms.⁶⁴

⁶⁰ See N.Y. Soc. Serv. Law § 483-ee(b)(8) (directing interagency task force on human trafficking to investigate connection between social media and human trafficking).

⁶¹ See Colo. Rev. Stat. Ann. § 24-31-116 (effective July 1, 2022 to June 31, 2023); Colo. Off. of the Att'y Gen., *Social Media*, *supra*, at 7.

⁶² See N.Y. Off. of the Att'y Gen., *Investigative Report*, *supra*, at 23-33; [Press Release, N.J. Off. of the Att'y Gen., Acting AG Platkin: New Jersey Launches Investigation of Social Media Platforms Discord and Twitch in Wake of Buffalo Shooting \(May 23, 2022\)](#).

⁶³ N.Y. Off. of the Att'y Gen., *Investigative Report*, *supra*, at 41-47. Following the Buffalo shooting, New York enacted a law requiring social media platforms to provide users with a mechanism for reporting hateful conduct and to inform users how the network will respond to reports. See N.Y. Gen. Bus. Law § 394-ccc (*enjoined by Volokh v. James*, 656 F. Supp. 3d 431 (S.D.N.Y. 2023), *appeal pending*, No. 23-356 (Mar. 13, 2023 2d Cir.)). In addition, New York created a State Police unit to monitor and investigate extremism on social media. See [N.Y. Exec. Order No. 18, 9 N.Y.C.R.R. § 9.18 \(May 18, 2022\) \(Preventing and Responding to Domestic Terrorism\)](#).

⁶⁴ Colo. Off. of the Att'y Gen., *Social Media*, *supra*, at 120-33.

II. THE COURT SHOULD PRESERVE STATES' AUTHORITY TO REGULATE SOCIAL MEDIA PLATFORMS.

“In considering the application of unchanging constitutional principles to new and rapidly evolving technology, this Court should proceed with caution.” *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786, 806, (2011) (Alito, J., concurring); *see also Biden v. Knight First Amend. Inst. at Columbia Univ.*, 141 S. Ct. 1220, 1221 (2021) (Thomas, J., concurring) (“[A]pplying old doctrines to new digital platforms is rarely straightforward.”). The Court should proceed carefully in these cases, adopting a nuanced approach that leaves room for consideration of the effect of a regulation on First Amendment–protected conduct and the strength of the regulating State’s interest.

A. Many Regulations of Social Media Platforms Do Not Trigger Heightened Scrutiny.

1. Many regulations have little, if any, effect on speech. In assessing regulations of social media platforms, the Court must consider each challenged provision individually. Where a provision applies only to non-expressive conduct or otherwise has little or no effect on speech, the First Amendment does not limit States’ authority to regulate. *See Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 706-07 (1986). Similarly, “the First Amendment does not prevent restrictions directed at commerce or conduct from imposing incidental burdens on speech.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011); *see Rumsfeld v. Forum for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 66 (2006). Social media platforms may not “claim special protection from governmental regulations” simply because they are in the business of hosting users’ speech. *See Arcara*, 478 U.S. at 705.

Even where a law implicates the First Amendment, the appropriate level of scrutiny will vary depending on the nature of the regulation. For example, compelled commercial disclosures of factual, noncontroversial information, like the disclosure of a platform's policies, receive the lowest level of protection and should be upheld if they reasonably relate to an appropriate governmental interest and do not unduly burden speech. *See Zauderer v. Office of Disciplinary Counsel of Sup. Ct.*, 471 U.S. 626, 650-51 (1985). Other regulations of a platform's commercial speech are subject to intermediate scrutiny. *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557, 564-65 (1980); *Sorrell*, 564 U.S. at 571. Expressive conduct is likewise entitled to lesser First Amendment protection and regulations of such conduct may be upheld under the same standard. *See United States v. O'Brien*, 391 U.S. 367, 380 (1968).

Courts must also consider whether a challenged speech restriction is content based, that is to say, if it applies to noncommercial speech "because of the topic discussed or the idea or message expressed." *See City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022) (quotation marks omitted). As the Court has made clear, a regulation is not content based simply because its application requires "reading the [speech] at issue." *Id.* Only those regulations that apply to speech based on its "substantive message" are content based. *See id.* at 71. And only where there is a content-based regulation should the court apply the most exacting scrutiny. Even then, regulations that are the least restrictive means of advancing a compelling government interest are constitutionally permissible. *See, e.g., Williams-Yulee v. Florida Bar*, 575 U.S. 433, 444 (2015).

2. Where First Amendment scrutiny does apply, the Court should reject NetChoice’s argument that laws that regulate only certain social media platforms, based on the platform’s number of users, the tools the platform offers to users, or other features of the platform, are speaker and content based, and thus subject to strict scrutiny. For example, many States have enacted or are considering laws that regulate only platforms with a certain threshold number of users, platforms that allow users to publicly share content, or platforms with other features that pose a risk to the State’s citizens. NetChoice’s argument that all such distinctions trigger strict scrutiny misapplies this Court’s precedents in a bid to all but foreclose regulation of social media platforms, which this Court should reject. *See Paxton* NetChoice Br. at 7-8, 37-40; *Moody* NetChoice Br. at 30-32.

First, contrary to NetChoice’s argument, a regulation that distinguishes between different platforms is not inherently constitutionally suspect. *See Leathers v. Medlock*, 499 U.S. 439, 449-50 (1991). Indeed, “[i]t would be error to conclude” that the First Amendment “mandates strict scrutiny” for regulations that apply to one “subset” of platforms but not to others. *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 660 (1994). To the contrary, “heightened scrutiny is unwarranted when the differential treatment is justified by some special characteristic” of the platforms subject to regulation, *id.* at 660-61 (quotation marks omitted), like the platform’s number of users or the tools it offers to those users.

The Court’s decision in *Turner Broadcasting* provides an example. There, the challenged regulations, which “distinguish[ed] between speakers in the television programming market,” were content neutral and were not “presumed invalid under the First Amend-

ment” because they differentiated based only on a particular characteristic of the regulated cable television services—namely, “the manner in which [they] transmit[ted] their messages to viewers,”—not based on the content of the messages they carried. *Id.* at 645.

For the same reason, regulations of social media platforms that target platforms with a certain threshold number of users or other particular features should not be presumed invalid. Many States have enacted or are considering such regulations, which may be “justified” by the platforms’ characteristics, *id.* at 660-61 (quotation marks omitted), which may pose a risk of harm to the States’ citizens.

Regardless of how the Court resolves the specific legal challenges presented in these cases, it should reject NetChoice’s invitation to apply a one-size-fits all First Amendment analysis. That approach would function as “a straitjacket that disables government from responding to serious problems” caused by social media. *See Denver Area Educ. Telecomms. Consortium, Inc. v. F.C.C.*, 518 U.S. 727, 741 (1996).

B. States Have Strong and Varied Interests in Regulating Social Media Platforms.

As demonstrated by the numerous examples detailed above, States have important and compelling interests in preventing harms caused by social media platforms that are distinct from the specific interests asserted by Florida and Texas in these cases. Any decision from this Court applying the First Amendment to the challenged laws should take into account the full spectrum of governmental interests that are implicated by social media platforms and ensure that amici States

remain able to use a range of regulatory options to address issues of immense importance to their residents.

For example, any decision in these cases should not prevent States from vindicating their compelling interest in regulating social media platforms to “safeguard[] the physical and psychological well-being of . . . minor[s].” *New York v. Ferber*, 458 U.S. 747, 756-57 (1982) (quotation marks omitted). Indeed, this Court has recognized that “the government’s interest in the well-being of its youth and in supporting parents’ claim to authority in their own household” justifies the regulation of even otherwise First Amendment protected expression. *See F.C.C. v. Pacifica Found.*, 438 U.S. 726, 749 (1978) (quotation marks omitted). As described above (at 5-12), social media platforms present unique risks for minors, whom States seek to protect through regulation and enforcement actions.

Similarly, a decision should not impinge on the States’ ability to protect their citizens’ “strong privacy interest . . . in the nondisclosure of compiled computerized information,” *United States Dep’t of Just. v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 766 (1989), or to regulate in furtherance of the important interest in “preventing deception of consumers,” *Zauderer*, 471 U.S. at 651. As described above (at 12-16), state-imposed privacy and transparency requirements protect consumers and ensure that consumers have the facts necessary to make informed decisions.

Finally, the Court should ensure that any decision in this case does not unduly burden the States’ ability to regulate social media platforms to protect public safety and prevent criminal activity. States’ “legitimate and compelling state interest in protecting the community from crime cannot be doubted.” *Schall v. Martin*,

467 U.S. 253, 264 (1984) (quotation marks omitted); see *Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 300 (1981). As noted above (at 16-19), social media platforms have become a nexus for certain criminal activities that States have a compelling interest in preventing. States' ability to craft solutions to this misuse of social media is fundamental to exercise of their police powers.

CONCLUSION

The Court's decision should recognize States' important interests in regulating social media platforms to prevent harm to their citizens and should avoid interpreting the First Amendment to immunize social media platforms from regulation.

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