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Algorithms, 'addictive' features and age limits: The First Amendment's social media patchwork

Federal courts are drawing different First Amendment lines as states crack down on minors' social media use, with restrictions on account access facing a lower constitutional bar than laws targeting a platform's messaging.

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When states try to protect children from social media, does it matter whether they regulate what platforms show kids or whether kids can get on at all? Where does the First Amendment draw the line?

This is a complex puzzle, and so far, we only have a few pieces. But patterns are emerging. When a state regulates what platforms show kids, the key question is whether the platform's choices are its own expression — which may hinge on whether humans shaped the underlying message. When a state regulates access, that question may not matter at all.

The starting point is *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), in which the Supreme Court reasoned that when platforms use algorithms to select, order and moderate third-party content according to community standards developed by employees (e.g. "no hate speech," "no vioence"), this reflects human decisions about what messages to convey and is therefore "protected expressive activity." But the Court suggested that the outcome may be different when platforms use algorithms to "recommend posts based solely on prior user activity," because in that case, "there is no apparent message being conveyed" by human employees.

That question — whether "personalized feeds" (e.g. "give user X more of whatever he likes") are expressive — was posed by a California law restricting minors' access to personalized feeds without parental consent. In *NetChoice, LLC v. Bonta*, 152 F.4th 1002 (9th Cir. 2025), the 9th Circuit declined to answer the question, calling the issue "fact intensive" and dependent on each platform's unique algorithm. The question was revisited the following year in *Meta Platforms, Inc. v. Bonta* (N.D. Cal. Aug. 5, 2026), in which Meta, YouTube and TikTok brought as-applied challenges with individualized facts about how their personalized feeds are compiled. A federal district court in California concluded that the feeds were not "expressive" and declined to preliminarily block the law.

Moody and Bonta provide guidance on the First Amendment considerations when a law restricts what content a platform may show to kids. But what about laws restricting whether kids can get on social media at all?

This was the question at the heart of an 11th Circuit case decided earlier this month, *Computer & Communications Industry Ass'n v. Uthmeier*. The case addresses a 2024 Florida law (HB3) that applies to social media platforms that meet three criteria: they use algorithms to select content for users, they use "addictive" features (e.g. infinite scrolling, push notifications, auto-play, livestreaming or display of personal interactive metrics), and at least 10% of daily active users under 16 spend an average of at least two hours a day on the platform. HB3 requires such platforms to prohibit children under 14 from creating accounts at all, and to require parental consent for 14- and 15-year-olds who wish to create accounts.

After internet trade associations claimed a First Amendment violation, the district court preliminarily enjoined HB3 and the 11th Circuit stayed the injunction pending appeal. On appeal, the 11th Circuit concluded that HB3 was likely constitutional.

The court's first task was to decide whether the First Amendment was implicated at all–an analysis that asks whether the law either "directly regulates protected expressive activity," or imposes a "disproportionate burden" on protected speech. Florida argued that HB3 "regulates product design, not children's speech," and therefore did not implicate expressive

activity. The court held that that even under Florida's framing, HB3 "disproportionate[ly] burden[s]" platforms' ability to communicate with young users, sufficient to trigger First Amendment scrutiny without needing to decide whether "addictive" features are themselves expressive.

Next came what the court called the "trickier" question: strict or intermediate scrutiny? The court concluded that since HB3 does not target the platforms' messaging but instead "regulates only front-end access and website mechanics (e.g., so-called 'addictive features')," it was content neutral and intermediate scrutiny was appropriate.

The court offered two examples to explain its conclusion that HB3 was content-neutral. First, in *Brown v. Ent. Merchs. Ass'n* (2011), the Supreme Court struck down a law banning the sale of "violent video games" to minors because it targeted a particular message ("violent" speech); by contrast, the 11th Circuit reasoned, HB3 applies to platforms without any regard to the topics discussed there, and "Truth Social is just as likely as Instagram to be affected by HB3" if triggering thresholds are met. Second, the court analogized HB3 to the federal law upheld in *TikTok, Inc. v. Garland* (2025) requiring TikTok to either cease or divest its U.S.-based operations, reasoning that in both cases the regulated parties could not "avoid or mitigate" the effects of the law by changing the substance of any posted expression — -a sign of content neutrality.

Next, the court applied intermediate scrutiny, asking whether HB3 advanced an important government interest without burdening substantially more speech than necessary. It held that Florida has an important interest in protecting minors from social media addiction and that HB3 is appropriately tailored because it is calibrated by age, restricts only account creation (not access per se), and reaches only platforms using features most likely to addict minors.

The platforms argued that it was Florida's burden to prove that less speech-restrictive alternatives would fail, citing a 2014 Supreme Court case in support, but the 11th Circuit instead chose to follow *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461 (2025), which it deemed more recent and, as an internet case, more on point. The court also rejected the platforms' argument that singling out social media, but not books or streaming services (Disney+, Hulu etc.), showed that Florida was impermissibly targeting "social" content, reasoning that books and websites differ in format, not substance, and that the government "need not address all aspects of a problem in one fell swoop" in an intermediate scrutiny analysis.

Moody, Bonta and Uthmeier reflect the different approaches courts are likely to take when assessing state regulation of social media use for minors. Where a law regulates how platforms present content, its fate will turn on the facts, and First Amendment scrutiny will apply if the platform's curation decisions are deemed "expressive." Where a law, like HB3, regulates access and is tethered to features "present across platforms" instead of to each platform's "unique algorithmic design," intermediate scrutiny seems likely to be applied. Open questions remain after Uthmeier, including whether "addictive" features are themselves expressive, and whether a law directly banning addictive features for minors without restricting account access would come out differently.

We will continue to await more pieces of this digital free-speech puzzle.

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