

RECENT LEGISLATION

CONSTITUTIONAL LAW — FIRST AMENDMENT — FLORIDA
PASSES LAW UNCONSTITUTIONALLY RESTRICTING MINORS’
ACCESS TO CONTENT ON SOCIAL MEDIA. — H.B. 3, 2024 Leg.,
Reg. Sess. (Fla. 2024).

With minors spending more time than ever on social media,¹ many parents are concerned about its effects on their children.² In response, legislatures across the country have passed laws limiting minors’ access to social media platforms.³ Last March, Florida Governor Ron DeSantis signed into law House Bill 3⁴ (H.B. 3), which bans children thirteen or younger from becoming social media account holders and requires parental consent for fourteen- and fifteen-year-olds to obtain accounts.⁵ While the new law supposedly protects minors, it infringes on their First Amendment rights by banning them from expressive platforms.

H.B. 3 was introduced in Florida’s 2024 legislative session.⁶ Framed as a law to “protect children,”⁷ this measure likely came from increased concern about the potential negative impacts social media could have on youth, particularly young girls.⁸ H.B. 3 easily passed both chambers of the state legislature.⁹ But free speech and technology policy

¹ Melinda Wenner Moyer, *Kids as Young as 8 Are Using Social Media More than Ever, Study Finds*, N.Y. TIMES (Mar. 24, 2022), <https://www.nytimes.com/2022/03/24/well/family/child-social-media-use.html> [https://perma.cc/6TBU-Z7MZ].

² See Susan Woolford, *Overuse of Social Media and Devices Top Parent Concerns as Kids Head Back to School*, UNIV. OF MICH. INST. FOR HEALTHCARE POL’Y & INNOVATION (Aug. 21, 2023), <https://ihpi.umich.edu/news/overuse-social-media-and-devices-top-parent-concerns-kids-head-back-school> [https://perma.cc/MG78-KSKV].

³ See, e.g., Press Release, Ron DeSantis, Gov., State of Fla., Governor DeSantis Signs Legislation to Protect Children and Uphold Parental Rights (Mar. 25, 2024), <https://www.flgov.com/eog/news/press/2024/governor-desantis-signs-legislation-protect-children-and-uphold-parental-rights> [https://perma.cc/G6BS-SZR4]; Andrew DeMillo, *Judge Blocks Arkansas Law Requiring Parental OK for Minors to Create Social Media Accounts*, AP NEWS (Aug. 31, 2023, 9:24 PM), <https://apnews.com/article/arkansas-social-media-parents-consent-kids-64db48ec94517911a4d2498f60841500> [https://perma.cc/KS3F-G4RH].

⁴ H.B. 3, 2024 Leg., Reg. Sess. (Fla. 2024) (codified at FLA. STAT. §§ 501.1736–1738 (2024)).

⁵ Press Release, Ron DeSantis, *supra* note 3.

⁶ *CS/CS/HB 3: Online Protections for Minors*, FLA. SENATE, <https://www.flsenate.gov/Session/Bill/2024/3> [https://perma.cc/N7XV-3W5C].

⁷ Press Release, Ron DeSantis, *supra* note 3.

⁸ See, e.g., David Remnick, *Jonathan Haidt Wants You to Take Away Your Kid’s Phone*, NEW YORKER (Apr. 20, 2024), <https://www.newyorker.com/news/the-new-yorker-interview/jonathan-haidt-wants-you-to-take-away-your-kids-phone> [https://perma.cc/7DMQ-GXP5]; Meg Tirrell, *Social Media Presents “Profound Risk of Harm” for Kids, Surgeon General Says, Calling Attention to Lack of Research*, CNN (May 24, 2023, 3:01 PM), <https://www.cnn.com/2023/05/23/health/social-media-kids-surgeon-general-advisory-wellness/index.html> [https://perma.cc/H5XE-ZQ9Y].

⁹ See News Service Florida, *Florida Senate Passes Revamped Plan Aimed at Keeping Kids Off Social Media. Here’s What to Know*, NBC6 S. FLA. (Mar. 4, 2024, 7:54 PM), <https://www.nbcmiami.com/news/local/florida-senate-passes-revamped-social-media-plan/3249091> [https://perma.cc/U72W-C6GQ]; News

advocates have criticized the law for violating minors' First Amendment rights and adults' expressive and privacy freedoms.¹⁰ At least twelve states have passed similar laws in the past several years.¹¹ Notably, courts have enjoined sections of at least four of these laws.¹²

H.B. 3 adds three sections to the "Consumer Protection" chapter of the state's statutes.¹³ The first prohibits social media platforms¹⁴ from contracting with minors thirteen or younger to become account holders.¹⁵ It also requires covered platforms to terminate accounts held by anyone who is thirteen or younger, or whom the platform categorizes as such for advertising.¹⁶ Furthermore, any fourteen- or fifteen-year-old

Service of Florida, *Florida Lawmakers Pass Revamped Bill to Keep Kids Off Social Media*, NBC6 S. FLA. (Mar. 6, 2024, 11:23 PM), <https://www.nbcmiami.com/news/local/florida-passes-hb-3-socialmedia-kids-bill/3252030> [<https://perma.cc/8UFS-HJEQ>].

¹⁰ See, e.g., Letter from Katie Blankenship, Dir., PEN Am. Fla., et al. to Kathleen Passidomo, President, Fla. Senate (Mar. 3, 2024), https://www.aclufl.org/sites/default/files/field_documents/coalition_letter_against_hb_3.pdf [<https://perma.cc/SVR7-ES85>] (urging the Florida Senate to "take stock of the depth of this bill's constitutional infringements" and arguing H.B. 3 "infringe[s] on Floridians' right to privacy" and "runs afoul of the First Amendment"); Greg Gonzalez, *New Florida Law Restricts First Amendment Rights Online*, FIRE (Mar. 25, 2024), <https://www.thefire.org/news/new-florida-law-restricts-first-amendment-rights-online> [<https://perma.cc/B53G-QQU4>] (arguing that the law "eliminat[es] free speech protection that Floridians, like all Americans, have long enjoyed"). Additionally, NetChoice and the Computer & Communications Industry Association recently challenged Florida H.B. 3, arguing that it violates minors' First Amendment rights and "endangers adults' access to lawful content." Press Release, Comput. & Commc'ns Indus. Ass'n, CCA Challenges Constitutionality of Florida's Social Media Rationing Law (Oct. 28, 2024), <https://ccianet.org/news/2024/10/ccia-challenges-constitutionality-of-floridas-social-media-rationing-law> [<https://perma.cc/89Q6-NBAR>].

¹¹ See *US State Age Assurance Laws for Social Media*, AGE VERIFICATION PROVIDERS ASS'N, <https://avpassociation.com/us-state-age-assurance-laws-for-social-media> [<https://perma.cc/U7GT-TY38>].

¹² See *NetChoice, LLC v. Griffin*, No. 23-CV-05105, 2023 WL 5660155, at *2 (W.D. Ark. Aug. 31, 2023) (Arkansas); *NetChoice, LLC v. Yost*, 716 F. Supp. 3d 539, 561–62 (S.D. Ohio 2024) (Ohio); *NetChoice, LLC v. Reyes*, Nos. 23-cv-00911 & 24-cv-00031, 2024 WL 4135626, at *20 (D. Utah Sept. 10, 2024) (Utah); *NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1125 (9th Cir. 2024) (California).

¹³ H.B. 3, 2024 Leg., Reg. Sess. (Fla. 2024) (codified at FLA. STAT. §§ 501.1736–.1738 (2024)).

¹⁴ The law defines a "social media platform" as "an online forum, website, or application that satisfies each of the following criteria:"

- (1) "Allows users to upload content or view the content or activity of other users;"
- (2) "Ten percent or more of the daily active users" under sixteen have, when using the platform, spent an average of two or more hours per day on the platform over the previous twelve months — or one month if the platform has not existed for twelve months;
- (3) "Employs algorithms that analyze user data . . . to select content for users; and"
- (4) Has at least one of the following features: infinite scrolling, push notifications about information specific to a user's account, personal metrics indicating the number of times other users have clicked buttons reacting to content, auto-playing videos, or live streaming.

FLA. STAT. § 501.1736(1)(e).

¹⁵ *Id.* § 501.1736(2)(a).

¹⁶ *Id.* § 501.1736(2)(b)(1). The bill provides for a ninety-day notice period during which the account holder may "effectively dispute the termination." *Id.*

account holder must have parental or guardian permission.¹⁷ Without parental consent, platforms must terminate those accounts.¹⁸ “[K]nowing or reckless violation” of these subsections constitutes “an unfair and deceptive trade practice” for which the government may seek “a civil penalty of up to \$50,000 per violation,” as well as “reasonable attorney fees and court costs.”¹⁹ Moreover, the bill allows minor account holders to recover “up to \$10,000 in damages” if the platform “knowingly or recklessly violates” the law.²⁰

The second section H.B. 3 created requires “commercial entit[ies] that knowingly and intentionally publish[] or distribute[] material harmful to minors” to use age verification to ensure that those “attempting to access the material” are at least eighteen.²¹ The final section H.B. 3 created sets requirements for third parties conducting anonymous age verification,²² prohibiting them from retaining or using for other purposes personal identifying information used for age verification²³ and requiring them to keep that information anonymous and secure.²⁴

Although H.B. 3 seems to protect minors by limiting their access to social media, in so doing, it unconstitutionally violates their First Amendment right to free expression. Minors have strong First Amendment rights, which H.B. 3 burdens by banning them from expressive platforms. And H.B. 3 is presumptively unconstitutional because it targets certain platforms based on their content — here, social subject matter. H.B. 3, as a content-based regulation not narrowly tailored to achieve a compelling governmental interest, cannot survive.

The Supreme Court has long recognized that minors have significant free speech rights.²⁵ The right to free speech and press includes the “right to receive [and] the right to read” as well as the right to speak.²⁶ While the Free Speech Clause primarily exists to protect access to

¹⁷ *Id.* § 501.1736(3)(a). The bill notes that if a court enjoins the enforcement of the provision requiring parental permission for minors aged fourteen or fifteen, then the subsection should be severed and replaced with language identical to the prohibition on those thirteen or younger but for those fourteen and fifteen as well. *Id.* § 501.1736(4).

¹⁸ *Id.* § 501.1736(3)(b)(1). The bill accounts for ninety days’ notice in this context as well. *Id.*

¹⁹ *Id.* § 501.1736(5). It additionally allows for punitive damages if a platform’s failure to comply with the section is a “consistent pattern of knowing or reckless conduct.” *Id.*

²⁰ *Id.* § 501.1736(6)(a).

²¹ *Id.* § 501.1737(2).

²² *See id.* § 501.1738. The bill defines “anonymous age verification” as “a commercially reasonable method used by a government agency or a business for the purpose of age verification which is conducted by a nongovernmental, independent third party organized under the laws of a state of the United States.” *Id.* § 501.1738(1).

²³ *Id.* § 501.1738(2)(a)–(b).

²⁴ *Id.* § 501.1738(2)(c)–(d).

²⁵ *See, e.g.,* *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212–13 (1975) (citing *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969)); *Tinker*, 393 U.S. at 506.

²⁶ *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965) (citing *Martin v. City of Struthers*, 318 U.S. 141, 143 (1943)).

“discourse on public matters”²⁷ — plenty of which can be found on social media — it also safeguards access to entertainment because “[w]hat is one man’s amusement, teaches another’s doctrine.”²⁸ The Supreme Court has made clear that states may restrict minors’ access to information more than they may restrict adults’ access,²⁹ but “only in relatively narrow and well-defined circumstances may the government bar public dissemination of protected materials to them.”³⁰ As such, “[s]peech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.”³¹ And in banning some minors from social media, that is exactly what the Florida legislature has done.³²

When a law burdens First Amendment free speech rights, it is typically subject to one of two forms of heightened judicial review: intermediate or strict scrutiny.³³ If the law applies evenhandedly to all topics, ideas, and subjects, then it is generally content neutral and is analyzed under the more relaxed intermediate scrutiny standard.³⁴ If, however, the law is content based, courts analyze it under the rigorous strict scrutiny test.³⁵ A content-based regulation “either single[s] out particular topics, ideas, or subjects for regulation — while leaving others unfettered — or [is] enacted because of governmental disagreement with a particular message.”³⁶ On the other hand, “[c]ontent-neutral laws . . . typically govern only the time, place, or manner of speech” — and “not its substance.”³⁷

H.B. 3 may not seem content based at first glance, but “not all ‘facial distinctions . . . are obvious.’”³⁸ H.B. 3’s supporters argue that it is not content based because it targets platforms based on their addictive design features rather than their content.³⁹ However, “a law ‘cannot

²⁷ *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 790 (2011).

²⁸ *Winters v. New York*, 333 U.S. 507, 510 (1948).

²⁹ *Erznoznik*, 422 U.S. at 212 (citing *Ginsberg v. New York*, 390 U.S. 629 (1968)).

³⁰ *Id.* at 213 (citing *Interstate Cir., Inc. v. City of Dallas*, 390 U.S. 676 (1968); *Rabeck v. New York*, 391 U.S. 462 (1968)).

³¹ *Brown*, 564 U.S. at 795 (quoting *Erznoznik*, 422 U.S. at 213–14).

³² See *Gonzalez*, *supra* note 10.

³³ Clay Calvert, *Scrutiny-Determination Avoidance in First Amendment Cases: Laudable Minimalism or Condemnable Evasion?*, 22 NEV. L.J. 1, 4 (2021).

³⁴ See *id.* at 3–4 (“[C]ontent-neutral measures face the more lenient and deferential intermediate scrutiny test.” *Id.* at 4.).

³⁵ *Brown*, 564 U.S. at 799 (citing *R.A.V. v. City of St. Paul*, 505 U.S. 377, 395 (1992)); see also Calvert, *supra* note 33, at 4. To pass strict scrutiny, a law burdening free expression must be “narrowly tailored such that it restricts no more speech than is necessary to serve [a] compelling [governmental] interest.” *Id.*

³⁶ Calvert, *supra* note 33, at 3; see Kent Greenfield, *Trademarks, Hate Speech, and Solving a Puzzle of Viewpoint Bias*, 2019 SUP. CT. REV. 183, 184 (2020).

³⁷ Calvert, *supra* note 33, at 3.

³⁸ *NetChoice, LLC v. Reyes*, Nos. 23-cv-00911 & 24-cv-0031, 2024 WL 4135626, at *9 (D. Utah Sept. 10, 2024) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)).

³⁹ See *News Service of Florida*, *supra* note 9.

escape classification as facially content based simply by swapping an obvious subject-matter distinction for a “function or purpose” proxy that achieves the same result.”⁴⁰ While content-based restrictions are more obvious when they facially target “particular subject matter,” laws targeting a platform’s “function or purpose” are also inherently “based on the message a speaker conveys.”⁴¹ A social media ban is content based if it is based on the idea that social media is addictive at least in part because of its content.⁴² And this law targets certain social media platforms because of the *content* the platforms serve to minors — not solely because their features may be addictive.

Indeed, the government’s characterization of H.B. 3’s purpose, which is dispositive,⁴³ suggests that it is intended to target specific content. The legislature is targeting the “‘social’ subject matter ‘of the material [the platforms] disseminate[.]’”⁴⁴ In other words, legislators are targeting platforms because they “allow” or encourage “users to interact socially with each other”⁴⁵ and that social content may lead to mental health harms. That legislators are targeting these platforms due to their content is clear in at least two places: H.B. 3’s Bill Analysis⁴⁶ and comments from State Representative Tyler Sirois.⁴⁷

⁴⁰ *Reyes*, 2024 WL 4135626, at *9 (quoting *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 142 S. Ct. 1464, 1474 (2022)).

⁴¹ *Reed*, 576 U.S. at 163–64.

⁴² *Cf. id.* at 164 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)) (noting that facially neutral laws may be content based if they hinge on reference to the content of the speech).

⁴³ When determining if a law is content based, “[t]he government’s purpose is the controlling consideration.” *Ward*, 491 U.S. at 791.

⁴⁴ *See Reyes*, 2024 WL 4135626, at *10 (second alteration in original) (quoting *NetChoice, LLC v. Fitch*, No. 24-cv-170, 2024 WL 3276409, at *9 (S.D. Miss. July 1, 2024)) (citing *Comput. & Commc’ns Indus. Ass’n v. Paxton*, No. 24-cv-849, 2024 WL 4051786, at *11 (W.D. Tex. Aug. 30, 2024)).

⁴⁵ *Id.* This is impermissible because “social interaction is the whole point” of these platforms, *id.* (quoting Defendants’ Memorandum in Opposition to Plaintiff’s Motion for Preliminary Injunction at 25, *Reyes*, No. 23-cv-00911, ECF No. 58) — which are themselves engaging in First Amendment-protected speech by curating the content on their platforms, *cf. Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2398 (2024). When a legislature targets platforms’ content curation, it targets those platforms based on their content. *See Reyes*, 2024 WL 4135626, at *10–11.

⁴⁶ Fla. H.R. Judiciary Comm., Bill Analysis, CS/CS/HB 3 — Online Protections for Minors (Mar. 28, 2024), <https://www.flhouse.gov> [<https://perma.cc/LSG4-Z8ZB>] (click “Bills”; then select “Regular Session 2024” from the Session dropdown menu; type “3” in the Bill Number field; follow the “CS/CS/HB 3 — Online Protections for Minors” hyperlink; and select “Final Bill Analysis 3/28/2024 3:09:24 PM” under “Bill Analysis”) [hereinafter H.B. 3 Staff Analysis].

⁴⁷ *See House Regulatory Reform and Economic Development Subcommittee — January 11, 2024*, 2024 Leg., Reg. Sess., at 6:37 (Fla. 2024) (statement of Rep. Tyler I. Sirois), <https://www.myfloridahouse.gov> [<https://perma.cc/7CZN-KFHA>] (click “Committees”; then select “2022–2024 (Speaker Renner)” from the Display Committees dropdown menu; click “Regulatory Reform & Economic Development Subcommittee”; then under “On Demand Video Archives” select “January 11, 2024-11:00 AM”); *House in Session — March 6, 2024*, 2024 Leg., Reg. Sess., at 6:10:09 (Fla. 2024) (statement of Rep. Tyler I. Sirois), <https://www.myfloridahouse.gov> [<https://perma.cc/EK3T-HDMT>] (click “House Schedule”; select March 6, 2024 from the calendar icon; then click “Watch Archived Stream” under “House — 58th Day of Regular Session”).

First, the Bill Analysis discusses harms associated with social media, primarily poor mental health, and ties them specifically to social content.⁴⁸ In discussing that social media harms minors’ — especially girls’ — mental health, it cites to various sources arguing that much of this harm relates to the social content on social media.⁴⁹ Though the legislature was not explicit, its motive in restricting minors’ ability to create social media accounts was to restrict access to social content because the alleged harm *comes from* that content.⁵⁰ And, as a Utah federal district court explained in *NetChoice, LLC v. Reyes*,⁵¹ that makes the regulation content based because the “whole point” of these platforms is to offer “interactive, immersive, social interaction” services.⁵²

Second, comments from Representative Sirois further reveal that H.B. 3 aims to prevent minors from viewing social content. Representative Sirois was the original sponsor of House Bill 1⁵³ (H.B. 1), a similar social media regulation that Governor DeSantis vetoed.⁵⁴ In discussing the bill on the House floor, Representative Sirois called H.B. 3 “the lifeboat for House Bill 1”⁵⁵ — indicating that it served the same goals as the previous bill. And when discussing H.B. 1, Representative Sirois identified the problem with social media as “a matter of the *content* that

⁴⁸ H.B. 3 Staff Analysis, *supra* note 46, at 4, 17–19.

⁴⁹ See *id.* at 4–5 nn.21–27; see also, e.g., Michele W. Berger, *Social Media Use Increases Depression and Loneliness*, PENN TODAY (Nov. 9, 2018), <https://penntoday.upenn.edu/news/social-media-use-increases-depression-and-loneliness> [<https://perma.cc/UJQ3-TJV5>] (“Some of the existing literature on social media suggests there’s an enormous amount of social comparison that happens. When you look at other people’s lives, particularly on Instagram, it’s easy to conclude that everyone else’s life is cooler or better than yours.”); Jonathan Haidt et al., *Social Media and Mental Health: A Collaborative Review* (ongoing) (unpublished manuscript), in *Collaborative Review Docs*, JONATHAN HAIDT, <https://jonathanhaidt.com/reviews> [<https://perma.cc/FGB5-RCGW>] (compiling studies discussing the harms of social media on mental health, and acknowledging that “it’s not just total hours that matter, it’s what teens are doing during those hours,” *id.* at 27).

⁵⁰ This is also clear from remarks by Florida House Speaker Paul Renner, who suggested that the legislature was cracking down on social media because it “harms children’s mental health and can lead to sexual predators communicating with minors.” News Service of Florida, *supra* note 9. The legislature cites sources attributing this harm to the content on social media, displaying that it is using addictive features as a proxy for content. See sources cited *supra* note 49.

⁵¹ Nos. 23-cv-00911 & 24-cv-0031, 2024 WL 4135626 (D. Utah Sept. 10, 2024).

⁵² *Id.* at *10 (quoting Defendants’ Memorandum in Opposition to Plaintiff’s Motion for Preliminary Injunction, *supra* note 45, at 25).

⁵³ *CS/HB 1 — Online Protections for Minors*, FLA. HOUSE OF REPRESENTATIVES, <https://www.myfloridahouse.gov> [<https://perma.cc/H857-RDY2>] (click “Bills”; then select “Regular Session 2024” from the Session dropdown menu; type “1” in the Bill Number field; and follow the “CS/HB 1 — Online Protections for Minors” hyperlink).

⁵⁴ See News Service of Florida, *supra* note 9. H.B. 1 would have compelled some social media platforms to prohibit minors under sixteen from creating accounts and would have mandated that those platforms use third-party age verification to achieve that aim. Andrew Atterbury, *DeSantis Vetoes Florida’s Social Media Restrictions for Minors*, POLITICO (Mar. 1, 2024, 5:02 PM), <https://www.politico.com/news/2024/03/01/desantis-vetoes-social-media-restrictions-florida-00144483> [<https://perma.cc/TXZ6-NBBW>].

⁵⁵ *House in Session — March 6, 2024*, *supra* note 47.

[minors are] seeing and posting and responding to one another with.”⁵⁶ Because H.B. 1 was meant to target the content minors are seeing, it is content based, and Representative Sirois’s “lifeboat” comment shows that H.B. 3 is meant to serve the same objectives.⁵⁷ Representative Sirois’s comments demonstrate that, while the law may incidentally sweep in platforms that do not prioritize social subject matter, the legislature’s focus was on platforms that encourage and curate social subject matter because of the content’s allegedly harmful effects. Thus, H.B. 3 should be analyzed under strict scrutiny.

Even a content-based law can survive strict scrutiny if it is narrowly tailored to serve a compelling governmental interest,⁵⁸ but H.B. 3 fails to meet either prong of this standard. First, the interest is insufficiently compelling. For a governmental interest to be compelling, there must be a “direct causal link” between social media and “harm to minors.”⁵⁹ In *Brown v. Entertainment Merchants Ass’n*,⁶⁰ a case where the Supreme Court struck down a California law prohibiting minors from purchasing violent video games, the Court said the evidence of harmful effects — like increased aggression — on minors showed “at best some correlation.”⁶¹ Similarly here, there is no clear direct causal link between harm to minors and social media. The American Psychological Association (APA) has made clear that “[u]sing social media is not inherently beneficial or harmful to young people.”⁶² Instead, “the effects of social media likely depend on what teens can do and see online, teens’ pre-existing strengths or vulnerabilities, and the contexts in which they grow up.”⁶³ Thus, at best, the state can show social media may potentially harm minors depending on how they use social media, how they grew up, and who they are as people. This is not a direct causal link.

⁵⁶ *House Regulatory Reform and Economic Development Subcommittee — January 11, 2024, supra* note 47. Representative Sirois explained that social media “highlights and underscores . . . differences and disparities,” including “who’s on the ski trip, who isn’t, who went to prom, who had a date to prom, who doesn’t.” *Id.*

⁵⁷ Just because Governor DeSantis vetoed H.B. 1 because it was unconstitutional but did not veto H.B. 3 does not mean H.B. 3 is constitutional. Rather, it is *less obviously* unconstitutional. The legislature’s motive in targeting social media platforms, according to both Speaker Renner and Representative Sirois, is to prevent minors from accessing social subject matter. While H.B. 3 does not as explicitly target platforms based on content, its purpose to target that content is clear.

⁵⁸ See *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 799 (2011) (discussing the strict scrutiny standard and stating that “[i]t is rare that a regulation restricting speech because of its content will ever be permissible” (quoting *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 818 (2000))).

⁵⁹ *Id.*

⁶⁰ 564 U.S. 786 (2011).

⁶¹ *Id.* at 800.

⁶² AM. PSYCH. ASS’N, HEALTH ADVISORY ON SOCIAL MEDIA USE IN ADOLESCENCE 3 (2023), <https://www.apa.org/topics/social-media-internet/health-advisory-adolescent-social-media-use.pdf> [<https://perma.cc/7N5G-R2S2>]. While the APA acknowledges that minors could benefit from parents monitoring their use of and limiting their time on social media, this remains context dependent. *Id.* at 5.

⁶³ *Id.* at 3.

Second, H.B. 3 is not narrowly tailored. Even if there are legitimate interests for limiting minors' access to social media, the government cannot constitutionally perform this role by banning minors from accessing information and expressing themselves on the platforms.⁶⁴ In analyzing a similar restriction, an Ohio federal district court recently called the law "untargeted" because after one-time parental approval, "parents and platforms [were] otherwise not required to protect [children from] the specific dangers that social media might pose."⁶⁵ H.B. 3 suffers from similar infirmities: If the addictive nature of social media platforms is so harmful to children, then the law is not tailored to serve the government's interest in protecting children because one-time parental permission allows children to be subjected to the purported harm, making it underinclusive.⁶⁶ It is also overinclusive because H.B. 3 violates even more rights by bringing adults into its fight, forcing them to unmask themselves to ensure minors are banned from social media.⁶⁷ Thus, the law is not sufficiently narrowly tailored.⁶⁸

While the government may reasonably aim to address harm to children, many expressive modes of consumption have been targeted as harmful for minors for centuries and later accepted as society moves on to the next bogeyman.⁶⁹ As the government figures out how or whether to address adequately those purported harms, it must recognize that "the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary' when a new and different medium for communication appears."⁷⁰ Instead of restricting expression because of its content, the government should pursue less restrictive means to advance its interest, like media literacy programs and educating the public about potential harms of social media.⁷¹

⁶⁴ See *NetChoice, LLC v. Griffin*, No. 23-CV-05105, 2023 WL 5660155, at *17 (W.D. Ark. Aug. 31, 2023); *NetChoice, LLC v. Yost*, 716 F. Supp. 3d 539, 559 (S.D. Ohio 2024).

⁶⁵ *Yost*, 716 F. Supp. 3d at 559 (citing *Brown*, 564 U.S. at 802).

⁶⁶ Cf. *Brown*, 564 U.S. at 802 (stating that the law was underinclusive because the "[l]egislature is perfectly willing to leave this dangerous, mind-altering material in the hands of children so long as one parent . . . says it's OK").

⁶⁷ Cf. *NetChoice, LLC v. Reyes*, Nos. 23-cv-00911 & 24-cv-0031, 2024 WL 4135626, at *16 n.169 (D. Utah Sept. 10, 2024) (quoting *NetChoice, LLC v. Fitch*, No. 24-cv-170, 2024 WL 3276409, at *12 (S.D. Miss. July 1, 2024)); see also *Gonzalez*, *supra* note 10.

⁶⁸ The Court has long suggested that the state is better served by implementing initiatives to encourage voluntary protection of children rather than imposing a state's power on individuals' expressive freedoms. Cf., e.g., *Reno v. ACLU*, 521 U.S. 844, 877 (1997) (noting the availability of software as an alternative "reasonably effective method" to monitor children); *Ashcroft v. ACLU*, 542 U.S. 656, 666–68 (2004) (suggesting "the use of filters," *id.* at 667).

⁶⁹ *Brown*, 564 U.S. at 797–98 (discussing how "dime novels depicting crime and 'penny dreadfuls' . . . were blamed . . . for juvenile delinquency," followed by "motion pictures," then "[r]adio dramas," then "comic books," *id.* at 797, then "television and music lyrics," and now "video games," *id.* at 798).

⁷⁰ *Id.* at 790 (quoting *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503 (1952)).

⁷¹ See, e.g., Zina Hutton, *States Begin to Address Media Literacy Through Legislation*, GOVERNING (Nov. 16, 2023), <https://www.governing.com/education/states-begin-to-address-media-literacy-through-legislation> [<https://perma.cc/9TJT-NUU5>].