

## Georgia SB 351

## VETO REQUEST

April 1, 2024

Dear Governor Kemp,

NetChoice respectfully asks that you **veto SB 351**. While there are some admirable aspects to SB 351, Part 3, Section 3-1, Chapter 6 of the bill creates blatant constitutional defects which would mandate an age-verification and parental consent regime for social media access.

If enacted, the bill's Part 3 defects would immediately invite legal challenges. As courts across the country have repeatedly reaffirmed, age-verification and parental consent schemes for social media are unconstitutional.

But even if these constitutional issues could be brushed aside, SB 351's age-verification and parental consent scheme would still be bad policy. By requiring social media services to collect sensitive personal information on its users, the bill would make Georgia users (including minors) less safe and risks exposing their data to hackers and identity thieves.

At its core, this "ID for the internet" regime is identical to those in Arkansas, California, and Ohio, that courts have consistently invalidated. Because SB 351 is riddled with unconstitutional provisions, it would fail to achieve its goal of protecting minors online. As we've seen, an unconstitutional law protects no one.

This letter explains the constitutional and privacy concerns related to SB 351's regulation of social media:

1. SB 351's core provisions are unconstitutional under the First Amendment—and already being actively litigated in other states; and
2. SB 351 would put Georgia residents' privacy at risk, leaving them vulnerable to data breaches and identity theft.

NetChoice is a trade association of leading internet businesses that promotes the value, convenience, and choice that internet business models provide to American consumers. Our mission is to make the internet safe for free enterprise and free expression.

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*NetChoice shares the goal of better protecting minors from harmful content online, but an unconstitutional law helps no one.*

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We share the goal of better protecting minors from harmful content online, but an unconstitutional law helps no one. NetChoice members have taken issues of teen safety seriously and in recent years have rolled out numerous new features, settings, parental tools, and protections to better empower parents and assist in monitoring their children’s use of social media.

We ask that you veto SB 351 and urge the legislature to use this as a way to jumpstart a larger conversation about how best to protect minors online. NetChoice would be happy to meet with your office or the legislature to discuss effective, constitutionally sound ways to protect minors online.

**SB 351’s core provisions are unconstitutional under the First Amendment—and are already being actively litigated in other states.**

SB 351 contains several constitutional defects. Chief among them are the requirements to 1) restrict access to vast swaths of valuable, constitutionally protected speech; 2) obtain verifiable parental consent before permitting minors to access social media; and 3) perform age-verification to identify users’ ages. Laws containing similar defects as those in SB 351 have already been challenged in federal court. Laws from Arkansas,<sup>1</sup> California,<sup>2</sup> and Ohio<sup>3</sup> are currently enjoined. Similarly, Utah’s social media law is currently subject to legal challenge.<sup>4</sup>

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<sup>1</sup> *NetChoice v. Griffin*, 2023 WL 5660155 (W.D. Ark., Aug. 31, 2023) (enjoining Arkansas’s law requiring parental consent and age-verification to access social media as unconstitutional under the First Amendment).

<sup>2</sup> *NetChoice v. Bonta*, 2023 WL 6135551 (N.D. Cal., Sep. 18, 2023) (enjoining California’s Age-Appropriate Design Code Act as unconstitutional under the First Amendment).

<sup>3</sup> *NetChoice v. Yost*, 2024 U.S. Dist. LEXIS 24129 (S.D. Ohio, Feb. 12, 2024) (enjoining Ohio’s parental consent for social media law as unconstitutional under the First Amendment).

<sup>4</sup> *NetChoice v. Reyes*, 2:23-cv-00911 (D. Utah).

## Restricting Access to Lawful Content

The internet made information, discourse, and speech “as diverse as human thought” readily accessible.<sup>5</sup> And the First Amendment prohibits the government from restricting access to lawful speech, engaging in discourse, expressing opinions, and more.<sup>6</sup> Indeed, the First Amendment’s protections are enjoyed by minors and adults alike.<sup>7</sup> When challenged, the Supreme Court has consistently reaffirmed this bedrock First Amendment principle.<sup>8</sup>

The fact that SB 351 covers the internet rather than books, television programs, or video games, does not change the First Amendment issue.<sup>9</sup> Social media websites provide access to speech on topics ranging from religious worship and political dialogue to sharing recipes and offering well-wishes. And the Supreme Court has made clear that the government lacks the “free-floating power to restrict the ideas to which children may be exposed.”<sup>10</sup>

If signed, SB 351 would violate minors’ First Amendment rights by imposing a governmental roadblock at the point of access itself. Indeed, neither SB 351 nor its supporters can avoid the First Amendment issues at hand by describing the regulation as one attempting to regulate “contracts.” By prohibiting access to speech, the First Amendment applies.<sup>11</sup>

## Parental Consent

SB 351 prohibits minors from creating an account without demonstrating he has express parental consent. Although not a complete ban, it is unconstitutional for the government to require parental consent to access lawful speech.

Parents, not governments, determine what languages their children learn,<sup>12</sup> what school to attend,<sup>13</sup> their religious upbringing,<sup>14</sup> and so forth. Parents are responsible not only for these high-level decisions, but also the granular ones down to what vegetable their child should have with dinner. The key is that for each of these decisions it is the *parents* who are in the driver’s seat when it comes to their children

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<sup>5</sup> *Packingham v. North Carolina*, 582 U.S. 98, 105 (2017).

<sup>6</sup> *Bd. of Educ. v. Pico*, 4557 U.S. 853, 867 (1982).

<sup>7</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) (holding that minors enjoy First Amendment rights).

<sup>8</sup> See e.g., *Mahanoy Area Sch. Dist. v. B.L.*, 141 S.Ct. 2038 (2021).

<sup>9</sup> *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 856 (1997) (holding that the First Amendment applies to the internet).

<sup>10</sup> *Brown v. Entertainment Merchants Association*, 564 U.S. 786, 794 (2011).

<sup>11</sup> *NetChoice v. Yost*, 2024 U.S. Dist. LEXIS 24129, \*17 (S.D. Ohio, Feb. 12, 2024) (There is no “contract exception” to the First Amendment.”).

<sup>12</sup> *Meyer v. Nebraska*, 262 U.S. 390 (1923).

<sup>13</sup> *Pierce v. Society of Sisters*, 269 U.S. 510 (1925).

<sup>14</sup> *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

and their families. In short, the government does not get first pass at what counts as “good parenting.” But SB 351 is precisely that.

In fact, in certain respects, SB 351 resembles California’s unconstitutional parental consent law for video games. The Supreme Court struck down California’s law over a decade ago.

In an attempt to prevent minors from accessing content that it deemed “too violent” for minors, California required that minors secure parental consent before they could purchase the game. When the law was challenged, the Supreme Court struck it down. Justice Scalia explained that the law was unconstitutional because it did not, as the State claimed, enforce parental authority. Instead, the law imposed *governmental authority* subject only to a parental veto.<sup>15</sup> Further, Justice Scalia explained that because violence or violent content is protected expression under the First Amendment, the State could not restrict minors from accessing it.<sup>16</sup>

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In fact, SB 351 is *more* troubling than the California scheme because its scope is not limited merely to “violent” content but applies to “social media companies” which offer a range of content including religious services, educational videos, advice on navigating mental health struggles and more. Other states have already tried imposing parental consent requirements on access to social media. Laws in Arkansas<sup>17</sup> and Ohio<sup>18</sup> have been enjoined because, like California’s video game law, these restrictions are unconstitutional. If enacted, SB 351 would meet the same fate.

### Age-Verification

SB 351 also expressly requires social media companies to conduct age-verification of its users—this presents additional First Amendment problems. Age-verification schemes for the internet are blatantly unconstitutional. Because the internet is home to significant amounts of First Amendment speech, users should not be forced to forfeit their anonymity in order to access it.

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<sup>15</sup> *Brown* at 795, fn. 3.

<sup>16</sup> *Id.* at 802 quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 212-213 (1975) (explaining that the First Amendment does not permit the government to penalize third parties from disseminating speech just in case the parents disapprove of the speech).

<sup>17</sup> *NetChoice v. Griffin*, 2023 WL 5660155 (W.D. Ark., Aug. 31, 2023)

<sup>18</sup> *NetChoice v. Yost*, 2024 U.S. Dist. LEXIS 24129, \*17 (S.D. Ohio, Feb. 12, 2024)

The Supreme Court has rejected the idea that there is any justification for requiring age-verification online.<sup>19</sup> And as with parental consent, lower courts have similarly rejected the idea that the states can require age-verification to access social media websites.<sup>20</sup> Age-verification not only precludes minors from accessing lawful speech but also chills the speech rights of *adult* users who elect not to use the site to safeguard their personal information

Age-verification cuts to the heart of another core First Amendment protection: anonymity. The framers understood this point and valued anonymity. It is not an exaggeration to say that we owe the existence of our constitutional system to anonymous speech.<sup>21</sup> The Supreme Court has explicitly affirmed that the First Amendment covers the right to speak anonymously<sup>22</sup> and has repeatedly struck down age-verification schemes finding that they would force users to “forgo the anonymity otherwise available on the internet.”<sup>23</sup> Because SB 351’s age-verification requirement mirrors Arkansas’, this scheme would be struck down on the same grounds.

### **SB 351 would put Georgia residents’ privacy at risk, leaving them vulnerable to data breaches and identity theft.**

Any scheme for online parental consent or age-verification presents serious privacy concerns. To comply with any such scheme, websites will necessarily collect sensitive information from their users to confirm that they are either above the age threshold or that they have the required parental consent. This necessary collection will make social media websites a prime target for identity thieves, hackers, and other bad actors.

These threats are all-too-real. Examples are all around us. Credit card companies, ancestry trackers,<sup>24</sup> and government agencies<sup>25</sup> have all fallen victim to breaches and put millions of people—including children—at risk for identity theft.<sup>26</sup> These risks are inevitable where vast amounts of sensitive, personal information is stored. By requiring social media companies to perform age-verification, proposals like SB

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<sup>19</sup> See e.g., *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 856 (1997); *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 662, 667 (2004).

<sup>20</sup> *Griffin*, 2023 WL 5660155 (W.D. Ark., Aug. 31, 2023)

<sup>21</sup> See ALEXANDER HAMILTON, JAMES MADISON & JOHN JAY, *THE FEDERALIST PAPERS* (Clinton Rossiter, 2003); *THE ANTI-FEDERALIST PAPERS* (Ralph Louis Ketcham, 2003). The essays supporting and opposing ratification of the Constitution in these papers were published pseudonymously.

<sup>22</sup> *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 357 (1995) (internal citations omitted).

<sup>23</sup> *Griffin* at \*51 quoting *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 99 (2d Cir. 2003).

<sup>24</sup> Villius Petkauskas, *Popular apps left biometric data, IDs of potentially millions of users in danger* (Mar. 14, 2022), <https://cybernews.com/security/popular-apps-left-biometric-data-ids-of-millions-of-users-in-danger/>.

<sup>25</sup> Sean Lyngaas, *Millions of Americans’ personal data exposed in global hack*, CNN POLITICS, June 16, 2023, <https://www.cnn.com/2023/06/16/politics/cyberattack-us-government/index.html>.

<sup>26</sup> See e.g., Javelin, *1.7 Million U.S. Children Fell Victim to Data Breaches According to Javelin’s 2022 Child Identity Fraud Study*, (Oct. 26, 2022), <https://javelinstrategy.com/press-release/17-million-us-children-fell-victim-data-breaches-according-javelins-2022-child>.

351 only serve to make Georgia and its residents the next target for hackers and identity thieves to exploit.

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Requirements that data be deleted or only used for certain purposes will not alleviate these concerns because websites will need to be able to verify to the government that they are following the age-verification or parental consent requirements. Accordingly, they will need to provide the information and confirmation to the government. In other words, websites will need to store this sensitive information and produce it at the government's request.

Despite the desire to protect minors online, if signed, SB 351 would create more dangers for Georgia's youth.

By restricting access to valuable speech, requiring parental consent, and necessitating the collection of sensitive data, SB 351 would violate the Constitution and set up Georgians for significant security risks.

Ultimately, Georgia would be better served by abandoning age-verification efforts for social media and instead pursuing legislative efforts to improve online literacy for minors and their parents. We believe educating students and adults about how to use social media in a safe and responsible manner, and avoiding heavy handed government mandates is the best path forward.

Again, we respectfully **ask you to veto SB 351**. As always, we offer ourselves as a resource to discuss any of these issues with you in further detail, and we appreciate the opportunity to provide you with our thoughts on this important matter.<sup>27</sup>

Sincerely,

Carl Szabo  
Vice President & General Counsel, NetChoice

*NetChoice is a trade association that works to protect free expression and promote free enterprise online.*

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<sup>27</sup> The views of NetChoice expressed here do not necessarily represent the views of NetChoice members.