

NetChoice, LLC v. Bonta: What the Ninth Circuit's Ruling Could Mean for Online Speech Regulation

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On September 9, 2025, the Ninth Circuit Court of Appeals affirmed a district court's denial of a preliminary injunction as to certain provisions of California's Protecting Our Kids from Social Media Addiction Act. This interlocutory ruling is significant for two reasons. First, it demonstrates why and how state laws can withstand and avoid First Amendment challenges. Second, it showcases the potential difficulties in establishing associational standing on behalf of member technology and digital commerce companies.

Protecting Our Kids from Social Media Addiction Act

To address concerns that children and youth are increasingly becoming addicted to social media, California passed the Protecting Our Kids from Social Media Addiction Act which regulates how "covered companies" are permitted to allow minors to access and use personalized recommendation algorithms without parental consent. "Covered companies" are any website or online service that "provides users with an addictive feed as a significant part" of its service—regardless of whether that service qualifies as a social media platform.

The Act (1) restricts how minors access algorithmic feeds, (2) restricts certain platform design features, and (3) mandates that platforms institute yet-unknown age-verification procedures (to be announced before 2027).

1. *Personalized-feed provisions.* The Act makes it unlawful, without parental consent, for websites to provide "addictive feed[s]" to minors. The Act defines an "addictive feed" as any part of an online service or mobile application in which media "generated or shared by users are, either concurrently or sequentially, recommended, selected, or prioritized for display" based "on information provided by the user, or otherwise associated with the user or the user's device."
2. *Default-settings provisions.* In the absence of parental consent, the Act regulates certain design features to make the platforms less addictive. Web platforms are not allowed to display to a minor how many likes, shares, or other forms of feedback a post has received within a personalized recommendation feed. Next, platforms must make minors' accounts private and only visible to friends on the platform.
3. *Age-verification procedures.* Until 2027, covered platforms only need to apply the Act to those users whom they know are minors. On January 1, 2027, companies will need to apply the Act's restrictions to all users unless the company can "reasonably determine" that a user is an adult. Before this date, the California Attorney General must promulgate regulations to define the platforms' age-verification obligations.

District Court Decision: NetChoice v. Bonta, 761 F.Supp.3d 1202 (N.D. Cal. 2024)

NetChoice, an internet trade association whose members include several leading social media companies, sought a preliminary injunction claiming that the Act facially and as applied infringed on its members' and users' First Amendment rights. Specifically, NetChoice claimed that the Act limits the members' ability to speak to minors, impedes minors' ability to access speech and speak publicly, and deters adults from

accessing companies' speech. The district court granted in part and denied in part NetChoice's motion for a preliminary injunction. It enjoined the enforcement of two provisions: (1) a restriction on sending minors notifications, and (2) a requirement that companies disclose the number of minors that use their services. *NetChoice v. Bonta*, 761 F. Supp. 3d 1202, 1232 (N.D. Cal. 2024).^[1]

Otherwise, the district court denied the request for an injunction. Procedurally, the district court held that NetChoice lacked associational standing because the as-applied challenge to the personalized feed provisions required each separate NetChoice member to participate as an individual in the lawsuit and to have its own "ad hoc factual inquiry."

As for the challenge to the Act, the court determined that NetChoice's challenge to the age-verification requirements was not ripe as the regulations have not yet been determined. The court concluded it could not adjudicate NetChoice's facial challenges to the personalized-feed provisions because the scope of the Act across the internet as a whole was not adequately shown in the record. Additionally, the Court concluded that the Act's definition of "addictive feeds" was not content based. Finally, the court found that the Act's like-count and private-mode default setting provisions were not content based and survived intermediate scrutiny.

The Ninth Circuit's Ruling and Analysis of NetChoice's First Amendment Challenges

In its September 9, 2025 ruling, the Court affirmed the district court's denial of injunctive relief with one exception.

NetChoice Cannot Show Associational Standing on Behalf of its Members to Challenge the Act's Personalized-Feed Provisions. The Ninth Circuit agreed that NetChoice lacked standing. In so holding, the Court focused its analysis on whether the platform feed and algorithm of each member is "expressive" – which would require the participation of individual NetChoice members.

The Court also questioned, but did not decide, whether a social media platforms' "personalized feeds" are speech deserving First Amendment protection. However, the Court recognized that this was a novel question that the Court could not address on the record before it.

The Court Upheld the Act's Private-Mode Provision. The Court held that the Act's private mode provision, which requires that minors' accounts are private and only visible to friends on the platform, was not content based.

NetChoice's Challenge to the Age-Verification Requirements Are Unripe. The Court held that NetChoice's challenge to the Act's age-verification requirement was neither imminent nor ripe because it will not start until 2027, no regulations have yet issued, and there is no indication of what conduct will be proscribed by the statute.

The Court Held that the Act Was Not Unconstitutionally Vague. The Court rejected NetChoice's arguments that the phrases "addictive feed," "addictive internet-based service," and "addictive" are vague, standardless, or pejorative, or that the exceptions in the Act create confusion about the services covered.

NetChoice is Likely to Prevail on its Argument on the Like-Count Provision as Applied and Facially. The Act requires that all websites/platforms covered under the Act utilize default settings – including a setting that disallows showing a minor the number of likes, shares, or feedback under a post (the "like-count" provision).

The Court found that the like-count provision is content based because it “restricts a website’s description of a post turn[ing] on what message the description will communicate.” *NetChoice, LLC v. Bonta*, 2025 WL 2600007, at *9 (9th Cir. Sept. 9, 2025).

Applying strict scrutiny, the Court determined that this was not the least restrictive way to advance California’s interest in protecting minors from social media addiction. The Court held that NetChoice was likely to prevail on its arguments that the like-count provision is unconstitutional, but that it was able to be severed from the Act.

The Court reversed the denial of an injunction as to the like-count provision and remanded with instructions to modify its injunction to enjoin the provision’s enforcement. The Court otherwise affirmed the district court’s denial of a preliminary injunction.

Implications of the NetChoice Ruling

The ruling procedurally implicates the ability of trade and business associations to bring claims. This has been a common way of bringing challenges to statutes and regulations seeking to regulate AI and social media platforms. See, e.g., *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024).

Substantively, it provides some guidance as to the type of laws that can withstand First Amendment and substantive challenges. Compare *Moody*, 603 U.S. at 745 (finding that two state laws violated the First Amendment rights of social media platforms) with *Bonta*, 2025 WL 2600007, at *17 (affirming the district court’s denial of injunctive relief with one exception). Lastly, the ruling leaves open the novel issue of whether personalized feeds are a form of social media platforms’ speech and whether restricting personalized feeds restricts access to those platforms’ speech.

Because the Ninth Circuit affirmed the trial court’s findings that NetChoice lacked standing to bring its as applied challenges and that other issues were not yet ripe, many issues remain to be decided regarding the Protecting Our Kids from Social Media Addiction Act and its implementation. This will likely lead to more litigation. The Ninth Circuit’s decision may also encourage additional regulation surrounding social media and internet platform restrictions for minors, by providing guidance to states that wish to regulate social media.

[1] These are not at issue on appeal. The appeal focuses on the provisions of the Act that were upheld by the district court.

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