United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 19, 2026
Thomas B. Plunkett, III
Clerk

No. 25-60348

NetChoice, L.L.C.,

Plaintiff—Appellee,

versus

Lynn Fitch, *in her official capacity as Attorney General of Mississippi*,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:24-CV-170

Before Richman, Engelhardt, and Wilson, *Circuit Judges*.

Cory T. Wilson, *Circuit Judge*:

This appeal concerns a renewed preliminary injunction enjoining the State of Mississippi and Attorney General Lynn Fitch from enforcing the Walker Montgomery Protecting Children Online Act, Miss. Code Ann. §§ 45-38-1 to 45-38-13 (2024); Miss. Code Ann. § 75-24-5 (2025). The Act regulates certain internet platforms by imposing what Mississippi contends are content-neutral regulatory requirements designed to further the State's compelling interest in protecting minors from sexual predators.

NetChoice, L.L.C., a nonprofit trade association of internet-focused companies, brought a facial challenge to the Act on First Amendment

grounds and secured a preliminary injunction from the district court. Following the Supreme Court's decision in *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), we vacated that injunction and remanded for further proceedings. *NetChoice, L.L.C. v. Fitch*, 134 F.4th 799 (5th Cir. 2025) (*Fitch I*). NetChoice amended its pleadings to allege an as-applied challenge. The district court then issued essentially the same relief it had in *Fitch I*—a preliminary injunction blocking the Act *in toto*—with the caveat that the injunction applied only to the nine NetChoice member platforms regulated by the Act.

But NetChoice failed to demonstrate that the Act is unconstitutional as applied to its individual members' sites. In turn, the district court did not appropriately tailor the relief it issued. So we vacate the preliminary injunction and remand for further proceedings consistent with *Moody* and this opinion.

I.

In 2024, Mississippi enacted HB 1126, the Walker Montgomery Protecting Children Online Act. *See* MISS. CODE ANN. §§ 45-38-1 to 45-38-13; MISS. CODE ANN. § 75-24-5. The Act was named in memory of Walker Montgomery, a 16-year-old Mississippian who committed suicide after he was the target of a sextortion plot by online predators. The Act regulates online platforms that the Mississippi Legislature determined are susceptible to use by sexual predators to prey on children. Specifically, the Act applies to platforms that allow users (1) to interact with other users; (2) to create profiles that others may see; and (3) to create or post content that others can see. The Act excludes platforms that provide access to "news, sports, commerce, [or] online video games," but only incidentally offer "interactive" or "chat" functions, as well as platforms that provide "access to career development opportunities."

The Act imposes three main duties upon covered sites. First, sites must register and "make commercially reasonable efforts to verify" the age of those who make accounts with the platform. Second, they must secure through "commercially reasonable" methods the "express consent of a parent or guardian" before allowing a known minor to hold an account. Third, they must make "commercially reasonable efforts" to implement strategies to "prevent or mitigate" the exposure of known minors to a series of listed harms. The Act also limits covered platforms' ability to collect and use minors' data, and the law provides for enforcement by minors' parents and the Attorney General. Violation of the Act may result in civil monetary penalties and criminal liability.

Before the Act could take effect, NetChoice filed this lawsuit and sought a TRO and preliminary injunction, arguing the Act facially violated the First Amendment. The district court agreed with NetChoice, found that it was likely to succeed on the merits of its facial challenge to the Act, and granted a preliminary injunction. *NetChoice, LLC v. Fitch*, 738 F. Supp. 3d 753, 761 (S.D. Miss. 2024), *vacated and remanded*, *Fitch I*, 134 F.4th at 799. The same day, the Supreme Court handed down *Moody*, which delineated the methodology that courts must use when analyzing and deciding facial challenges in the first instance. 603 U.S. 707. In view of *Moody*'s instruction, we vacated the preliminary injunction and remanded to allow the district court to apply *Moody*'s framework to NetChoice's facial challenge. *Fitch I*, 134 F.4th at 809.

On remand, NetChoice filed an amended complaint, adding a new paragraph alleging that "the Act is unconstitutional as applied to NetChoice members and their services regulated by the Act." But other than interlineating the phrase "as applied" throughout the rest of the complaint, NetChoice did not further amend its pleading's substance. NetChoice then renewed its request for an injunction, now on an "as-applied" basis. In its

amended motion, NetChoice asserted that resolution of the "as-applied claims . . . does not require engaging in the additional facial-challenge analysis contemplated by [*Fitch I*]." NetChoice grounded its as-applied challenge on a newly submitted declaration from its General Counsel, Bartlett Cleland, as well as the declarations it had previously submitted from Alexandra Veitch (of YouTube), Gautham Pai (of Nextdoor), and Denise Paolucci (of Dreamwidth). Beyond those declarations, neither NetChoice nor its member websites proffered evidence about how the Act would function as applied to them.[1]

The district court again entered an injunction. The district court enjoined the Act in its entirety, but now only as applied to the nine member platforms identified by NetChoice. The district court determined that injunctive relief was merited because NetChoice had "carried its burden of demonstrating a substantial likelihood of success on the merits of its claim that the Act is unconstitutional under a First Amendment as-applied challenge."

Mississippi appealed and requested that this court stay the preliminary injunction pending appeal. This court did so, *NetChoice v. Fitch*, No. 25-60348, 2025 WL 2078435, at *1 (5th Cir. July 17, 2025), and NetChoice then filed an emergency application before the Supreme Court to vacate the stay. The Supreme Court left the stay in place without noted dissent.[2] *NetChoice, LLC v. Fitch*, 606 U.S. —, 145 S. Ct. 2658 (2025)

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[1] The NetChoice members covered by the new injunction are Reddit, YouTube (operated by Google), Facebook and Instagram (operated by Meta), X (formerly Twitter), Snapchat, Pinterest, Nextdoor, and Dreamwidth.

[2] Justice Kavanaugh wrote a concurring opinion stating his view that NetChoice had "demonstrated that it is likely to succeed on the merits" under current First Amendment precedents but that the emergency application should be denied "because NetChoice has not sufficiently demonstrated that the balance of harms and equities favors

(mem.). Now, we weigh the merits of the district court's second preliminary injunction.

II.

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (citation omitted). A plaintiff seeking a preliminary injunction must establish that (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in the plaintiff's favor; and (4) an injunction is in the public interest. *Id.* at 20; *see also Harrison v. Young*, 48 F.4th 331, 339 (5th Cir. 2022) (citing *Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Par. Gov't*, 849 F.3d 615, 624 (5th Cir. 2017)). We review a district court's grant of a preliminary injunction for abuse of discretion. *Atchafalaya Basinkeeper v. U.S. Army Corps of Eng'rs*, 894 F.3d 692, 696 (5th Cir. 2018) (citation omitted). "A district court abuses its discretion if it (1) relies on clearly erroneous factual findings or erroneous conclusions of law when deciding to grant the injunction, or (2) misapplies the factual or legal conclusions when fashioning its injunctive relief." *Texas v. United States*, 50 F.4th 498, 530 (5th Cir. 2022) (quoting *Valentine v. Collier*, 993 F.3d 270, 280 (5th Cir. 2021)).

III.

The district court erred in granting its second injunction. The district court explained that it granted as-applied injunctive relief because it found NetChoice had "carried its burden of demonstrating a substantial likelihood of success on the merits of its claim that the Act is unconstitutional under a

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it at this time." *NetChoice*, 145 S. Ct. at 2658 (KAVANAUGH, J., concurring in the denial of application to vacate stay of preliminary injunction).

First Amendment as-applied challenge" as to nine of the member sites. But because the district court did not perform the fact-intensive analysis necessary to substantiate why the Act is unconstitutional as applied to each member website, and because it did not tailor injunctive relief to each member website, it erred in issuing the second injunction. Below we explain (A) what was required for as-applied relief, and (B) how the district court failed to meet that standard.

A.

"[C]lassifying a lawsuit as facial or as-applied affects the extent to which the invalidity of the challenged law must be demonstrated and the corresponding 'breadth of the remedy.'" *Bucklew v. Precythe*, 587 U.S. 119, 138 (2019) (citing *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331 (2010)). To succeed in a facial constitutional challenge under the First Amendment, a movant must establish that "a substantial number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Moody*, 603 U.S. at 723 (alteration in original) (quoting *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021)).[3] By contrast, "a plaintiff generally cannot prevail on an *as-applied* challenge without showing that the law has in fact been (or is sufficiently likely to be) unconstitutionally *applied* to him." *McCullen v. Coakley*, 573 U.S. 464, 485 n.4 (2014); *see also United States v. Mgmt. Consulting, Inc.*, 636 F. Supp. 3d

[3] This standard is distinct from how courts weigh facial challenges in other contexts: Generally, a plaintiff lodging a facial constitutional challenge "must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). Though the Supreme Court has somewhat "lowered that very high bar" in First Amendment cases, *Moody*, 603 U.S. at 723, the test for facial relief in First Amendment cases nonetheless remains a rigorous one.

610, 619 (E.D. Va. 2022) (discussing the difference between facial and as-applied challenges).

"[T]he distinction between facial and as-applied challenges . . . . goes to the breadth of the remedy . . . , not what must be pleaded in a complaint." *Citizens United*, 558 U.S. at 331; *see also Richmond Med. Ctr. for Women v. Herring*, 570 F.3d 165, 172–73 (4th Cir. 2009) (en banc) (explaining the origins and purposes of facial challenges as compared to as-applied challenges). In weighing an as-applied challenge, "a developed factual record is essential," *Justice v. Hosemann*, 771 F.3d 285, 292 (5th Cir. 2014), and "the court confines its analysis to the statute's constitutionality as to the particular plaintiff," *LIA Network v. City of Kerrville*, 163 F.4th 147, 162 (5th Cir. 2025). So, for example, in an as-applied challenge, "[i]f a frail and elderly grandmother uses marijuana for a chronic medical condition a day before possessing a gun . . . the constitutional analysis will consider only those circumstances, not what a different defendant might do." *United States v. Veasley*, 98 F.4th 906, 909 (8th Cir. 2024). It is expressly the burden of the plaintiff bringing an as-applied challenge to adduce the facts upon which it bases its challenge. *In re Cao*, 619 F.3d 410, 434 (5th Cir. 2010) (en banc) (citing *Khachaturian v. Fed. Election Comm'n*, 980 F.2d 330, 331 (5th Cir. 1992)). That is, the plaintiff must proffer "enough facts for the [c]ourt to decide the constitutional claim while avoiding 'premature interpretation of statutes' requiring speculation or conjecture on a 'factually barebones record.'" *Id.* (citation modified) (quoting *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229 (2010) (THOMAS, J., concurring in part and concurring in the judgment)).

The contours of the analysis that courts must undertake prior to issuing as-applied relief are somewhat unclear, as "[t]his area of the law is murky: 'confusion abounds' over the attributes and analysis necessary for each type of challenge." *LIA Network*, 163 F.4th at 161; *see also Justice*, 771

F.3d at 292 ("Confusion abounds over the scope of as-applied and other types of First Amendment challenges that a plaintiff can pursue when challenging a statute."). This opacity is exacerbated when courts are wrestling with cases which involve "new technologies with transformative capabilities." *TikTok Inc. v. Garland*, 604 U.S. 56, 62 (2025) (per curiam).

But a couple things are clear. First, for a plaintiff successfully to argue that a statute is unconstitutional as applied, the plaintiff must demonstrate that the statute actually applies, *i.e.*, that it works to impinge on the plaintiff's constitutionally-protected conduct. *McCullen*, 573 U.S. at 485 n.4. Second, as noted above, to determine whether a plaintiff has made that showing, "a developed factual record is essential." *Justice*, 771 F.3d at 292. Generally, where plaintiffs have not "developed a sufficiently concrete record," they are unlikely to "sustain their as-applied challenge." *Id.*; *see also Worley v. Fla. Sec'y of State*, 717 F.3d 1238, 1249 (11th Cir. 2013) ("[W]e are not equipped to evaluate [a] case as an as applied challenge because the record does not tell us enough about what [plaintiffs] are doing."). Moreover, "[p]articularized facts are what allow a court to issue a narrowly tailored and circumscribed remedy." *Justice*, 771 F.3d at 292. Indeed, the "hallmarks" of an as-applied remedy are "dependability and a limited scope." *Id*. at 294.

Moody offers guidance for a proper as-applied analysis and narrowly tailored remedy. There, the Supreme Court provided a targeted analysis of the state laws at issue as applied to Facebook's NewsFeed and YouTube's homepage, with the significant caveat that "[n]othing said [in *Moody*] addresses *any* of the laws' other applications . . . ." 603 U.S. at 727 (emphasis added). In other words, the Court cabined its own as-applied analysis to a narrow question: the application of Texas's editorial-focused regulations against Facebook and YouTube's application of content-moderation policies to their feeds. The analysis did not extend even to other products or functionality offered by those companies. *Id*. at 734. And the

Court cautioned that any assumption that its as-applied analysis could be extrapolated to cover comparable products or functionality (such as other major online platforms' feeds) would be fraught, given that the "record [was] incomplete even as to the [non-Facebook or YouTube] social media platforms' main feeds." *Id.*[4] In short, an as-applied injunction is necessarily a limited one, constrained by the specifics of the factual record. This constraint requires any as-applied relief to be narrowly tailored to the specific unconstitutional applications of the law—grounded in the record of the case—as to each individual plaintiff.

B.

Here, the present record is not developed enough to have allowed the necessary crafting of any as-applied remedy. Indeed, the record before us does not even demonstrate that the Act applies to all the platforms NetChoice asserts are covered. It follows that the district court was unable to engage in the searching analysis that *Moody* and other precedent contemplate. Simply put, the district court had too little to go on in entering its second injunction—which included a complete bar on enforcement of the Act as to nine covered platforms operated by NetChoice's members. Because the injunction was not narrowly tailored as applied to those sites, the relief entered by the district court was at least premature, if not unwarranted.

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[4] The separate concurrences in *Moody* underscore this limitation. Justice Barrett observed that "[a]nalyzing how the First Amendment bears on [Facebook's Newsfeed, YouTube's homepage, and other feeds] is complicated enough without simultaneously analyzing how it bears on a platform's other functions." *Moody*, 603 U.S. at 745 (BARRETT, J., concurring). And Justice Thomas underscored that as-applied relief "provides some notice to the political branches, enabling the Executive Branch to tailor future enforcement of the statute to avoid violating the Constitution or [the Legislative Branch] to amend the statute." *Id.* at 758 (THOMAS, J., concurring). Both concurrences hinge on the factual record's being developed enough to allow for tailored, specific relief by the district court and meaningful review of that relief on appeal.

The factual basis for the district court's as-applied injunction consisted of four declarations, submitted by Bartlett Cleland, NetChoice's General Counsel, and Alexandra Veitch (of YouTube), Gautham Pai (of Nextdoor), and Denise Paolucci (of Dreamwidth). These declarations largely consist of general contentions that the affected platforms' services will be impacted by the Act's requirements. But they fail to show with any particularity *how* the services will be affected by the Act, as required for an as-applied challenge. Nor does the record substantiate *what* products and functions will be affected by operation of the Act.

As to six other member platforms—X (formerly Twitter), Facebook, Instagram, Pinterest, Reddit, and Snapchat—there are no details in the record about which of their products are affected, or how. So even accepting the Bartlett Declaration's assertion that these platforms are regulated by the Act, we are left in the dark as to which of these sites' functionalities are covered, much less how to tailor injunctive relief as applied to each platform.

Take X as illustrative of these deficiencies. X is a microblogging platform characterized by its continuous feed of shortform posts. But beyond that flagship function, X maintains a large suite of other functions: the "For You" feed, the "Following" feed, direct messaging, various advertising and sponsorship products, a shopping platform, and Grok, X's standalone AI feature. *See generally* X for Business, https://business.x.com/en (last visited Nov. 18, 2026). But which of these functions are implicated by the Act, or how—or even whether—the Act regulates them, is unsubstantiated either in the record or in the district court's injunction.

Facebook, Instagram, Pinterest, Reddit, and Snapchat are similar. The companies are known for certain flagship products, but they each maintain other significant functionality. *See, e.g.*, Meta for Business, https://www.facebook.com/business/ (last visited Nov. 18, 2026); Reddit

for Business, https://www.business.reddit.com/ (last visited Nov. 18, 2026); Pinterest for Business, https://business.pinterest.com/ (last visited Nov. 18, 2026). Yet there is nothing in the record showing how the Act would apply—much less apply unconstitutionally—to these companies' products. The closest NetChoice's proffered evidence comes to providing this essential information is Bartlett's testimony that "[t]he Act's requirements are burdensome, will make it more difficult for NetChoice members to provide their websites to minors and adults, and will burden minors and adults' access to highly valuable and protected speech," and that "[t]he systems that the Act requires covered websites to adopt will take many covered websites" more than two months to "implement at scale." These statements are wholly unspecific, falling well short of the particularized facts necessary for a court to factor when tailoring an as-applied injunction. *See Justice*, 771 F.3d at 292.

Granted, in urging its as-applied challenge, NetChoice is not required to delineate "the full scope of actors regulated by the Act and the activities it regulates" or "weigh violative applications of the Act against non-violative applications," as it would be to sustain a facial challenge. *Fitch I*, 134 F.4th at 809. But NetChoice still must show what activities the Act regulates as to covered member platforms and how the regulation of those specific activities by the Act is unconstitutional as applied. *See Justice*, 771 F.3d at 292; *see also Moody*, 603 U.S. at 745 (BARRETT, J., concurring) ("If NetChoice's members are concerned about preserving their editorial discretion with respect to the services on which they have focused throughout this litigation . . . they would be better served by bringing a First Amendment challenge as applied to those functions."). On the record before us, it has not done so.

In like manner, the Supreme Court noted in *Moody* that a court's as-applied analysis must necessarily be fashioned to address specific applications of the challenged law. *See id.* at 727 ("Nothing said here

addresses any of the laws' other applications, which may or may not share the First Amendment problems described below."). Properly conducted, an as-applied First Amendment analysis of even just one functionality of a social media platform is likely to be "complicated" and involve "platform- and function-specific questions." *Id.* at 745, 747–48 (BARRETT, J., concurring). Such analytical depth makes sense in the context of an as-applied challenge, because without such rigor, district courts will struggle to confect appropriately narrow relief, and reviewing courts will grapple with meaningful review. *Cf. Justice*, 771 F.3d at 292; *Worley*, 717 F.3d at 1249; *see Ficher v. Bickham*, 70 F.4th 257, 260 (5th Cir. 2023) (noting that we are "a court of review, not first view").

Here, the district court did not engage in that kind of "platform- and function-specific" analysis before entering its second injunction. The crux of its analysis regarding which members' platforms and functionalities are regulated by the Act is confined to a single paragraph:

> A threshold issue is whether the challenged provisions are subject to First Amendment scrutiny. NetChoice maintains that "[t]he Act is unconstitutional as applied to covered members' services: Dreamwidth, Facebook, Instagram, Nextdoor, Pinterest, Reddit, Snapchat, X, and YouTube." . . . NetChoice . . . "has provided three member declarations from Google, Nextdoor, and Dreamwidth discussing how the Act applies to their respective services" and "has also explained how the Act applies to its covered members, both in its own declaration and its pleadings." The Court concurs with NetChoice that, based on its evidentiary submissions at this stage of the case, it has made a sufficient factual showing that the Act applies to the aforementioned members.

While the district court mechanically catalogued the NetChoice members affected by the Act, it did not identify those members' specific functionalities or platforms covered by the Act (or any that are not). Nor did the court

articulate how the Act was unconstitutional as applied to those functionalities and platforms. Before entering its second injunction providing as-applied relief, the court was required to engage in that analysis. *Cf. Moody*, 603 U.S. at 734–40 (analyzing a Texas statute as applied to Facebook and YouTube's principal feeds); *see also Justice*, 771 F.3d at 292.

Finally, the scope of the injunction at issue does not bear the hallmarks of an as-applied injunction. Rather, it is strikingly facial. *See Justice*, 771 F.3d at 294; *LIA Network*, 163 F.4th at 162 (noting that a "total injunction" is the quintessential facial relief). The district court issued a blanket injunction prohibiting Mississippi from enforcing any provision of the Act as to the nine named member websites. That is tantamount to facial relief as to those NetChoice members, the breadth of which was not warranted on the record before the court.[5]

To the contrary, to award as-applied relief, the district court must on remand "determine the commercially reasonable efforts, as used in the Act, or the Act's requirements for each [NetChoice member], requirements likely to be different with each [platform or functionality] facing a unique regulatory burden." *Fitch I*, 134 F.4th at 809 (internal quotations omitted). NetChoice, as plaintiff, bears the burden to "produce the facts upon which [it] bases [its] challenge." *In re Cao*, 619 F.3d at 434 (citing *Khachaturian*, 980 F.2d at 331). That is, it is incumbent on NetChoice to substantiate with specificity how each section of the Act is unconstitutional as applied member-by-member, function-by-function, and statutory section-by-section. *See id.* Assuming NetChoice makes this showing, the district court then must

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[5] Indeed, Mississippi contends that the relief ordered by the district court is so transparently facial that the district court violated this court's prior mandate in entering its second injunction. We disagree with the assertion that the district court acted in derogation of *Fitch I*, particularly given the "murky" state of the law in this area, *see supra*, at 7–8.

determine, in like specificity, whether and how the Act violates the First Amendment as applied, providing a "factual analysis determining the commercially reasonable effort demanded of each individual [NetChoice member]" seeking injunctive relief. *See Fitch I*, 134 F.4th at 809.

IV.

Because NetChoice failed to substantiate, with the required granularity, how the Act is unconstitutional as applied to its individual members, the record before us does not support the district court's second, as-applied injunction entered in this case. As an outgrowth of that deficiency, the district court likewise did not appropriately tailor the relief it awarded NetChoice.

Accordingly, we VACATE the district court's preliminary injunction and REMAND for further proceedings consistent with this opinion.