

## Alabama House Judiciary Committee Hearing

# HB 43 Undermines Parental Choice and Violates the First Amendment

Mar 2, 2022

Dear Chairman Hill, Vice-Chairman Wadsworth, and Members of the House Judiciary Committee:

We ask that you **not** advance HB 43 as it will undermine parental choice and is a clear violation of the First Amendment.

Many policymakers and voters are understandably concerned about the content children and teenagers may be exposed to on and offline.

As a former educator myself who grew up and attended law school in Alabama, I understand the good intentions behind these bills and the desire to protect children from harmful content; however, proposals such as HB 43 are not the solution. In fact, this proposal undermines parental choice and is unconstitutional on First Amendment grounds.

As a result, even if the intentions of protecting children are laudable, the committee should ***not advance HB 43.***

## The Bill Undermines Parental Choice

Today parents have a wide range of opinions of what sort of content they deem appropriate for their children at any age. But HB 43 would undermine parental choice as HB 43 dictates to parents and device manufacturers what content they should deem appropriate or inappropriate not only for their children but for themselves. In doing so, HB 43 sends a message to parents that the state prefers a specific option rather than trusting them to choose the balance and risks that work best for their family.

Definitions of “harmful to minors” such as the one referenced in this statute are typically broad and often require the judgment of outside sources. Technology is not always able to understand the nuances and in an effort to ensure compliance with the law are likely to over-include rather than under-include content. The result could be that not only are things such as pornography unavailable but great works of art, sexual and reproductive health materials, and other legitimate content are unavailable to Alabamans without first unlocking their or their teenager’s device.

A better solution is to empower parents to use the range of tools available to avoid and protect their children and teenagers from certain content. Because HB 43 is a one-size-fits-all approach, it lacks the nuances that are often required for parents to have conversations with their children about certain types of content. It also uses a blunt tool that is merely considered on-or-off rather than the approach a parent may take as a child grows and trust develops.

As most of us have experienced, many teenagers are often early adopters of new technologies and able to navigate it in unexpected ways. A default of presuming filters are on could give parents a false sense of security that their teen is not exposed to harmful content when the child knows how to navigate around it.

A false sense of security brought about by the filters might mean that parents and other adults won't have important conversations with teens about what to do when exposed to harmful content.

## The Bill is an Unconstitutional Infringement and Would Negatively Impact Legitimate Speech

While the government is entitled to take reasonable steps to protect minors from harmful content that might otherwise be constitutionally protected, it may not do so in a way that is so broad it limits adults' access to legal content. Because this bill changes the default settings on devices that may be owned and used solely by adults as well as those used by or shared with children, it is overly broad and limits adults' access to legal content. In *Ashcroft v. ACLU*, the Supreme Court struck down a federal law that attempted to prevent the posting of content harmful to children on the web due to such impact as well as the harm and chilling effect that the associated fines could have on legal protected speech. Similarly the requirement to turn device filters off presents additional hurdles for adult users of devices that is unlikely to be deemed reasonable.

The existing marketplace provides less restrictive options that can empower families and individuals around the content they choose to consume. The bill could create new vulnerabilities around online anonymity for adults and new security risks for the most sensitive personal information.

Beyond these initial concerns, this bill creates a new and dangerous risk for the government to intervene into speech. Government authorities could abuse the definition of "harmful to minors" to block an array of content beyond the original good intentions of the bill including opposing opinions or health information.

Given the impact on parental choice and its clear violations of the First Amendment, we ask you to **not** advance HB 43.

Thank you again for the opportunity to testify.

Sincerely,

Jennifer Huddleston  
Policy Counsel  
**NetChoice**

*NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.*