

CRS Report Shows First Amendment Questions Raised in NetChoice v. Bonta Ruling for Congress

The nonpartisan Congressional Research Service (CRS) reviewed the court ruling in NetChoice’s California lawsuit in 2023 and explains how various Congressional proposals, including the Kids Online Safety Act (KOSA), may similarly conflict with the U.S. Constitution.

Regulating Expression Conflicts with the First Amendment.

“The district court concluded that ‘restrict[ing] the ‘availability and use’ of information by some speakers but not others, and for some purposes but not others, is a regulation of protected expression.”

Mimicking International Rules May Run Into Constitutional Conflict.

“Internet regulations imported from the UK, which has no equivalent to the First Amendment, will not necessarily survive scrutiny from United States courts.”

Requiring Age Estimation Runs Counter to Stated Government Interests to Protect Kids Online.

“Requiring that businesses estimate users’ ages could, in the court’s view, ‘actually... exacerbate the problem’ by requiring businesses to increase collection of personal information.”

Regulating Information Access Conflicts with the First Amendment.

“Much of what online services do can be characterized as collecting, providing, using, or making available data and information. As a result, many regulations directed at online services may be subject to the types of First Amendment arguments NetChoice raised against the CAADCA.”

Broad, Unclear Rules Conflict With the First Amendment.

“If required to evaluate whether a wide range of content is detrimental to anyone from an infant to a person just shy of eighteen, websites would not be certain what content might expose them to liability and might therefore bar children from accessing more content than necessary.”

Congress, keep kids—and all Americans—safe online by embracing SHIELD and rejecting unconstitutional proposals.

