

IS KOSA UNCONSTITUTIONAL?

Decisions in NetChoice's lawsuits against the states of California, Arkansas, and Ohio show the legal problems with the latest version of the Kids Online Safety Act.

1: Social media age assurance **conflicts with the First Amendment.**



To avoid liability under KOSA, social media companies will need to verify each of their users, resulting in every user, regardless of age, being required to provide government-issued IDs to exercise their constitutionally-protected speech rights.

The judges in NetChoice's Arkansas and Ohio lawsuits explain that this likely violates the First Amendment because it chills free speech.

3: Parents are the most appropriate to make digital parenting decisions—**not the government.**



In NetChoice's Arkansas case, the judge rightly observed that parents have many tools available to them from the vast majority of NetChoice's member companies to control their child's online experience. These existing, under-utilized parental controls provide guardians with barriers without creating privacy issues or running afoul of the Constitution.

"Of course, parents may rightly decide to regulate their children's use of social media—including restricting the amount of time they spend on it, the content they may access, or even those they chat with. And many tools exist to help parents with this."

5: Requiring companies by law to collect more data will **invade privacy.**



KOSA's implicit requirements will require social media companies to collect vast amounts of data on all users—minors and adults—to avoid liability. As the judge in NetChoice's California case observed, this method is "not only unlikely to materially alleviate the harm of insufficient data and privacy protections for children, but actually likely to exacerbate the problem by inducing covered businesses to require consumers, including children, to divulge additional personal information."

"Such measures would appear to counter the State's interest in increasing privacy protections for children."

2: Unworkable, one-size-fits-all laws **chill constitutionally protected speech.**



KOSA's "duty of care" standard is overbroad — unnecessarily censoring tons of valuable, constitutionally protected speech.

In NetChoice's Arkansas case, the judge noted that the law, like KOSA, was likely unconstitutional in part because it sought to ban access to "the entire mall," rather than just places of concern.

4: Politicians & FTC will have the power to **block access to information they disagree with.**



Under the current KOSA version, state AGs would be able to pressure private companies into removing content state politicians consider "harmful," a HIGHLY subjective term.

This version of KOSA also empowers the FTC to punish companies. Lawmakers should hesitate before bolstering this FTC and handing it power over free speech online after it has already abused its existing power and resources.

In NetChoice's California lawsuit, the judge called out a similar provision: "The State has no right to enforce obligations that would essentially press private companies into service as government censors, thus violating the First Amendment by proxy."

AN UNCONSTITUTIONAL LAW WILL PROTECT NO ONE.

Lawmakers need to get it right to keep Americans secure online.

What can Congress do instead?

Embrace the components of NetChoice's **SHIELD**, which provides policymakers and industry with constitutional solutions to digital concerns.

