

KOSA Is Likely Unconstitutional

Court decisions in NetChoice’s cases in California, Arkansas, Ohio, Mississippi, and at the Supreme Court show the Kids Online Safety Act is very likely unconstitutional.

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, Mississippi, and Ohio lawsuits explain that this likely violates the First Amendment because it chills and overly burdens free speech.

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

In NetChoice’s Mississippi and Arkansas cases, both judges explicitly 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 controls provide parents and guardians with barriers for their children without creating undue 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,” said Judge Brooks in the Arkansas decision.

3: 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.”

4: Unworkable, one-size-fits-all, and vague laws chill constitutionally protected speech.

KOSA’s vague, over-broad rules would create arbitrary enforcement problems that will chill constitutionally protected speech and expression. In NetChoice’s Mississippi case, the judge recognized this problem with that state’s law.



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

5: 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 that likely violates the First Amendment.

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.”

6: Compelling companies to restrict protected speech violates the First Amendment.



KOSA contains various provisions, including its “duty of care” standard, that require companies to restrict constitutionally protected speech — unnecessarily censoring tons of valuable, protected content and violating companies’ First Amendment editorial rights solidified in the Supreme Court’s NetChoice doctrine (Moody v. NetChoice, LLC, 2024).

Mississippi’s law contains similar provisions that Judge Ozerden ruled as constitutionally suspect: “A state ‘has no power to restrict expression because of its message, its ideas, its subject matter, or its content,’ and ‘[c]ontent-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”

AN UNCONSTITUTIONAL LAW WILL PROTECT NO ONE.

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

What can Congress do instead?

Empower law enforcement to prosecute cyber criminals, enforce existing laws to stop predators online, and educate parents & children. To learn more, visit netchoice.org/SHIELD.

