

Request for Veto: SB 976, the Protecting our Kids from Social Media Addiction Act

VETO REQUEST

Sept. 5, 2024

Dear Governor Newsom,

We respectfully urge you to **veto** SB 976 which would prohibit a platform from curating and recommending content via an algorithm unless they verify that a user is over 18 or obtain verifiable parental consent. While we share the goal of protecting children online, we believe this legislation raises significant concerns regarding privacy, constitutionality, and practical implementation.

While well-intentioned, SB 976 has significant flaws:

- Violates the First Amendment rights of platforms and minors alike
- Endangers children by requiring them to share their sensitive personally identifiable information, which creates risks that it will be captured and misused by malefactors.
- Fails to protect a single citizen from harm

NetChoice is a trade association of leading internet businesses that promotes the value, convenience, and choice that internet business models provide to American consumers. Our mission is to make the internet safe for free enterprise and free expression.

We share the sponsor's goal to better protect minors from harmful content online. NetChoice members have taken issues of teen safety seriously and in recent years have rolled out numerous new features, settings, parental tools, and protections to better empower parents and assist in monitoring their children's use of social media. We ask that you veto SB 976 and instead use this bill as a way to jumpstart a larger conversation about how best to protect minors online and consider alternatives that do not raise constitutional issues.

Like California’s AADC, SB 976 Violates the First Amendment

Just last month, the U.S. Court of Appeals for the Ninth Circuit ruled in NetChoice’s favor in our case against California’s unconstitutional, so-called “Age Appropriate Design Code,” *NetChoice v. Bonta*. The court noted that the AADC’s Data Protection Impact Assessment (DPIA) requirement likely violates the First Amendment by compelling speech and commandeering private companies to act as roving censors. This would have forced online services to restrict access to protected speech and information for all ages.

Much like the AADC, SB 976 poses a number of First Amendment problems. First, SB 976 would impose restrictions on the dissemination of content that the Supreme Court found to be impermissible in *NetChoice v. Moody*. Second, it would impose age-verification and parental consent requirements on the ability to receive content which the Supreme Court struck down in *Reno* and *Brown*—not to mention that district courts have been striking down across the country in the last year.

Additionally, SB 976 prohibits websites from using “addictive feeds” to disseminate content to their users. But these “addictive feeds” are the result of content being “selected” and “prioritized” to the users. In short, restricting how websites disseminate information directly interferes with their ability to engage in editorial discretion. Editorial discretion is at the core of the First Amendment’s protection. It includes the right of a newspaper to run the pieces that accord with its editorial standards¹, protects the parade organizer’s ability to exclude messages from being displayed², and it protects a website’s ability to disseminate content to its users according to their own editorial choices.³

Because the restriction on “addictive feeds” directly infringes on the ability of websites to disseminate content according to their own editorial standards and choices, SB 976 violates the First Amendment.

SB 976 Puts Minors’ Sensitive Data at Risk

SB 976 was ostensibly introduced to protect children but instead it puts children’s sensitive data at greater privacy and security risks. Under the bill, a platform cannot offer an algorithmic feed unless it can determine that a user is not a minor, forcing every user to turn over extremely sensitive personally

¹ *Miami Herald v. Tornillo*, 418 U.S. 241 (1974)

² *Hurley v. Irish-American Gay*, 515 U.S. 557 (1995).

³ *Moody v. NetChoice*, 144 S.Ct. 2383 (2024).

identifiable information. Documents which conclusively establish users' birthdates are likely to be government-issued. Large-scale mandatory collection of highly sensitive government identification data increases the risks that it will be captured and misused.

Requiring identity authentication of all users adds several unconstitutional barriers to sharing and accessing First Amendment-protected online speech. SB 976 unconstitutionally restricts both adults' and minors' access to First Amendment-protected content. Laws that chill and restrict Americans' speech in this way are unconstitutional under the First Amendment unless they pass strict scrutiny; a stringent test SB 976 will surely fail.⁴

Laws that restrict Americans' access to digital content on account of age are unconstitutional under the First Amendment unless they pass strict scrutiny.⁵ To survive strict scrutiny, a law must be narrowly tailored to achieve a compelling government interest.⁶ The government nearly always fails this test—in state after state, courts have invalidated restrictions on internet communications or content deemed harmful to minors.⁷ SB 976 will be no different.

While the Supreme Court has acknowledged that the government has an important interest in children's welfare⁸, California "must specifically identify an 'actual problem' in need of solving" to establish a "compelling interest."⁹ In *Brown v. Entertainment Merchants' Ass'n*, the Supreme Court invalidated California's ban on the sale of violent video games to minors. The Court held that California failed strict scrutiny because (1) violent video games are constitutionally protected speech and (2) the state's "predictive judgments" that such games cause aggression in minors was not aimed at an actual problem. Indeed, the State's interest was not compelling because "without direct proof of a causal link" between video games and aggression, the State was merely speculating about a potential problem.

⁴ See, e.g., *Reno v. ACLU*, 521 U.S. 844 (1997); *Ashcroft v. ACLU (Ashcroft II)*, 542 U.S. 656 (2004).

⁵ See, e.g., *Reno v. ACLU*, 521 U.S. 844 (1997); *Ashcroft v. ACLU (Ashcroft II)*, 542 U.S. 656 (2004).

⁶ *Reno*, 521 U.S. at 874.

⁷ See, e.g., *American Booksellers Foundation v. Sullivan*, 799 F. Supp. 2d 1078 (D. Alaska 2011); *American Booksellers Foundation v. Coakley*, 2010 WL 4273802 (D. Mass. 2010); *PSINet, Inc. v. Chapman*, 362 F.3d 227 (4th Cir. 2004).

⁸ See *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989) ("We have recognized that there is a compelling interest in protecting the physical and psychological well-being of minors."); *Denver Area Ed. Telecomms. Consortium, Inc. v. FCC*, 518 U.S. 727, 743 (1996) (identifying "the need to protect children from exposure to patently offensive sex-related material" as an interest "this Court has often found compelling").

⁹ *Brown v. Entertainment Merchants' Ass'n*, 564 U.S. 786, 799 (2011) (invalidating California's attempt to ban minors from accessing "violent" video games because violent video games are protected speech).

A Better Approach

Rather than enact clearly unconstitutional laws, California would be better served enacting laws that help the citizens and are legal. NetChoice is working with lawmakers from across the country to achieve such ends.

Requiring Digital Education in Schools

Education is one of the best, most readily available tools at the government's disposal to protect minors and adults from online deception. California should redouble its legislative efforts to improve digital literacy for its citizens. We believe educating citizens about the electoral and voting processes and how to spot deceptive statements regarding elections is better and more effective than heavy handed government bans on free speech.

This approach will not only reach children where they are, but will help arm them to become better digital citizens.

Updating Child Abuse Laws for AI

Today, child abusers are able to use artificial intelligence to create images and escape justice under existing Child Sexual Abuse Material (CSAM) laws. This is because existing CSAM laws require real images of the abuse, rather than AI generated ones. NetChoice is working with lawmakers to create laws that fill the gaps in existing CSAM laws to protect children from such abuses.

Empowering law enforcement to arrest child abusers

Today less than 1% of all reports of child abuse are even investigated. That means that 99% of reports of child abuse go unheard. This is because law enforcement doesn't have the resources it needs to investigate and prosecute child abusers. NetChoice supports giving law enforcement the resources it needs to put child abusers behind bars.

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In conclusion, NetChoice shares lawmakers' desire to better protect young people online. To that end, we believe there are better, more effective ways to achieve these goals. Given the legislation's clear constitutional problems, we ask you to **veto** this bill and adopt measures capable of achieving both outcomes without violating the Constitution.

As always, we offer ourselves as a resource to discuss these issues in further detail. We appreciate your attention to this matter.¹⁰

Sincerely,

Amy Bos
Director of State and Federal Affairs, NetChoice
NetChoice

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

¹⁰ The views of NetChoice expressed here do not necessarily represent the views of NetChoice members