

Indiana Senate Bill 11

OPPOSITION TESTIMONY

January 13, 2025

Dear Chairman Brown, Ranking Member Koch, and Members of the Senate Judiciary Committee::

On behalf of NetChoice, a national trade association working to make the internet safe for free enterprise and free expression, we write to express our opposition to Senate Bill 11, which would prohibit young people from accessing social media without verifiable parental consent.

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 oppose SB 11 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.

Key Concerns:

1. SB 11 imposes unconstitutional age-verification and parental consent requirements;
2. The Supreme Court and lower courts have consistently held parental consent for accessing lawful speech online unconstitutional; and
3. Age-verification and parental consent presents heightened threats to privacy and undermines the state's interest in protecting the privacy of minors.

SB 11's core provisions are unconstitutional and are already being actively litigated in other states:

SB 11 prohibits minors under 16 from accessing social media absent parental consent. Although not a complete ban, requiring parental consent to access lawful speech is also unconstitutional.

The bill's restrictions on minors' access to social media platforms raise First Amendment concerns by limiting their ability to access information and engage in protected speech. Courts have consistently recognized that minors have constitutional rights to receive information and ideas through various media. The bill's requirements would effectively create a barrier to constitutionally protected speech, as platforms would be required to verify age before allowing access to any content. This constitutes a prior restraint on speech, which courts have traditionally viewed with particular skepticism. Similar provisions have been challenged in federal court and laws in Utah, Mississippi, Arkansas, and Ohio are currently enjoined.

Additionally, the Supreme Court has invalidated parental consent requirements when they impermissibly chill access to lawful speech.¹ In *Brown v. Entertainment Merchants Association*, the Court struck down a California law restricting minors' access to violent video games without parental consent. The Court rejected the notion that a new category of unprotected speech could be created for speech directed at children, emphasizing that minors are entitled to significant First Amendment protection. Justice Scalia's majority opinion noted that the government cannot "restrict the ideas to which children may be exposed" simply because it disagrees with them.

When other courts have examined age-verification and parental consent laws, *Brown* governs. For example, when the District Court for the Southern District of Ohio reiterated that parental consent laws do not enforce parental authority but enforces *governmental* authority subject to a parental veto. "[Ohio's parental consent law] appears to be exactly that sort of law. And like content-based regulations, laws that require parental consent for children to access constitutionally protected, non-obscene content, are subject to strict scrutiny."²

Age-Verification and parental consent requirements undermine privacy:

While we share the legislature's goal of protecting young people online, SB 11's approach would create significant privacy and security concerns while potentially limiting beneficial online interactions for Indiana's youth.

SB 11 would require social media companies to collect and verify personal information about minors in order to obtain parental consent. The bill's requirements would force platforms to collect sensitive personal information from both minors and parents in order to actually establish the relationship, thus, creating new data security vulnerabilities. This runs counter to best practices of data minimization and could make Indiana residents more susceptible to identity theft and fraud.

Some states that have experimented with age-verification and parental consent have required the collection of a government ID card, credit card number, or biometric information to ensure the website is complying with the law. But by requiring the collection (and then, implicitly, the storage) of this sensitive

¹ *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786 (2011).

² *NetChoice v. Yost*, 716 F. Supp. 3d 539, 558 (S.D. Ohio 2024).

information, age-verification requirements make websites the perfect target for hackers, identity thieves, and other bad actors.

As we have seen, no number of safeguards can ensure against data breaches. According to Child Identity Fraud Reports from Javelin Strategy and Research, nearly 2 million children were victims of identity theft in 2022³. Meanwhile, the 2019 hack of Pearson (a school technology provider) exposed information of thousands of children, including their names, birthdates, and email addresses.⁴ Even government agencies responsible for storing personal information have been subject to massive data leaks.⁵ Mandating that websites or services collect sensitive personal data on minors as a precondition for accessing vast swaths of online speech substantially increases these risks. They also make websites juicier targets for hackers.

Accordingly, state legislatures should evaluate whether their proposed policies would advance privacy protections or simply subject minors and adults to greater vulnerability in their online lives.

Given the constitutional problems presented by age-verification and parental consent, NetChoice urges you to oppose SB 11 to avoid identical constitutional pitfalls. Instead, we respectfully ask you to work with industry stakeholders to develop more effective approaches to protecting young people online while preserving their privacy and access to beneficial digital services. As always, we offer ourselves as a resource to discuss any of these issues with you in more detail.

Sincerely,

Amy Bos

Director of Federal and State Affairs

NetChoice is a trade association that works to protect free expression and promote free enterprise online.

³ Javelin, *1.7 Million U.S. Children Fell Victim to Data Breaches According to Javelin's 2022 Child Identity Fraud Study*, (Oct. 26, 2022) (last visited Mar. 22, 2024),

⁴ Lindsay McKenzie, *Pearson Hack Exposes Thousands of Students' Data*, INSIDE HIGHER ED (Aug. 4, 2019), <https://www.insidehighered.com/quicktakes/2019/08/05/pearson-hack-exposes-thousands-students%E2%80%99-data>.

⁵ Sean Lyngaas, *Millions of Americans' personal data exposed in global hack*, CNN POLITICS, June 16, 2023, <https://www.cnn.com/2023/06/16/politics/cyberattack-us-government/index.html>.