

## **Arkansas SB 611, to amend the Social Media Safety Act**

### **OPPOSITION TESTIMONY**

April 8, 2025

#### **Arkansas Legislature House Insurance and Commerce Committee**

Chair Maddox, Vice-Chair Steimel, and members of the committee.

We write today in strong opposition to SB 611, legislation that would attempt to circumvent a recent court ruling determining that Arkansas's Social Media Safety Act is unconstitutional. This bill would continue to mandate that online platforms censor lawful and constitutionally protected expression on behalf of the state as well as an unlawful age verification regime.

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 minor safety seriously and have consistently 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.

#### **SB 611 Violates the First Amendment**

Arkansas's SB 611 has been introduced by the office of the Governor following the recent ruling in *NetChoice v. Griffin*. On March 31, 2025, the U.S. District Court ruled that Act 689 was unconstitutional and was permanently enjoined from ever going into effect, because it violates the First and Fourteenth Amendments to the United States Constitution.

Instead of acquiescing to the ruling of the court and taking time to consider the legal principles underlined in the ruling, the Governor has instead introduced legislation that would “amend” this defunct, unconstitutional legislation. The language offered in SB 611 either fails to address the legal issues with the original text or actively makes them worse. As such, NetChoice strongly advises that the legislature reject this bill.

The ruling in the case made clear that the bill violated the constitutional rights of every citizen in Arkansas. Judge Brooks wrote “Arkansas takes a hatchet to adults’ and minors’ protected speech alike though the Constitution demands it use a scalpel.”<sup>1</sup>

There have been significant attempts by Arkansas, and other states that have passed similarly enjoined laws, to clarify an imagined distinction between child safety and censorship. Indeed, various governments have seemed to conclude that when online speech elimination occurs at the request of the state, the mere utterance of “safety” acts as some sort of talisman against the protections of the First Amendment. This is false. Again, as stated plainly in the ruling in *NetChoice v. Griffin*, “Act 689 is a content based restriction on speech that...violates the First Amendment.”<sup>2</sup> The Act also serves, through government fiat, to enlist online platforms “into service as the private censors of the state.”<sup>3</sup>

Age verification requirements were also at issue in the court’s ruling against the state in *NetChoice v. Griffin*. States with similar provisions have insisted that online age verification is analogous to in-person ID checks for the purchase of controlled substances like alcohol and cigarettes. Those states, including Arkansas, have failed to appreciate that alcohol or cigarettes and protected speech are entirely dissimilar—certainly in a practical sense and quite obviously in a constitutional one. The fact is that Arkansans have a constitutional right to engage with and create their own speech. The state producing artificial barriers to constitutionally protected activity is a violation of its citizen’s most fundamental rights. A government that has the power to keep its people from speaking online also has the power to keep them from petitioning, from assembling, and from prayer. As such, the court ruled that “imposition of an age-verification requirement for account creation is maximally burdensome” to the First Amendment rights of Arkansans.<sup>4</sup>

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<sup>1</sup> *NetChoice v. Griffin*, 2025 U.S. Dist. LEXIS 61278, \*50 (W.D. Ark., March 31, 2025).

<sup>2</sup> *Id.* at \*40.

<sup>3</sup> *Id.* at \*50.

<sup>4</sup> *Id.* at \*36.

The above serves to clarify why exactly Act 689 failed to withstand legal challenge. It also serves to emphasize what would have to change about a law in order for it to remain in effect. SB 611 seeks to revive Act 689 without remedying a single one of its constitutional flaws. As written, it raises the same constitutional concerns and is unlikely to survive judicial review.

The state was also chastised by the court for employing vague terminology that would have made Act 689 exceedingly difficult to comply with. In SB 611 many of these definitions are changed and replaced with different, still vague terms that would make Act 689 exceedingly difficult to comply with. As such, it appears to be a distinction without a difference.

On the age verification front—a provision that was expressly found to violate the First Amendment, the Governor’s new legislative language doubles down on enforcement of that provision. It is difficult to imagine how the inclusion of this language is meant to help the legislation withstand further legal scrutiny.

The bill then adds a whole host of new unconstitutional provisions that seek to further restrict legal speech and have already been enjoined in other jurisdictions. Provisions around algorithms, speech curfews, content restrictions, and advertising all seek to expand the plentiful array of constitutional violations that Act 689 had previously doled out to the citizens of Arkansas.

SB 611 is entirely unresponsive to the ruling of the court in *NetChoice v. Griffin*. If it seeks to “fix” anything at all it would appear the Governor’s office has identified the bedrock American freedom of speech as what needs fixing. This should concern us all.

## **Conclusion**

SB 611 is unconstitutional because Act 689 has been ruled unconstitutional, and the one has taken no steps to fix the problems of the other.

The legislature, however, has been gifted a path forward on this issue by the court. Speech restrictions are found to be especially violative of the First Amendment when a “less restrictive means” of achieving

one's goal remains. In this case, parents are the ones most empowered to change the outcomes their children may obtain online. The state then has ample opportunity to empower those parents rather than itself. Teach parents what tools are available to them and help educate their children on the safe use of digital tools.

Censorship cannot be synonymous with child safety. Any legislation that seeks to tear down the freedoms enshrined in the First Amendment will fail to stand for long. NetChoice makes clear as often as we need to, an unconstitutional law protects no one. We believe there are constitutionally sound approaches to protecting children online that don't infringe on First Amendment rights, and we're eager to work with legislators on these alternatives.

We urge the committee to reject SB 611.<sup>5</sup>

Sincerely,

Zachary Lilly  
Deputy Director of State and Federal Affairs  
NetChoice

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

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<sup>5</sup> The views of NetChoice expressed here do not necessarily represent the views of all NetChoice members.