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NetChoice
Protecting Free Speech and Free Enterprise Online

New Jersey A4015: Censorship of Online Speech

TESTIMONY IN OPPOSITION

June 28, 2026

New Jersey Assembly
Budget Committee

Members of the Assembly Budget Committee,

On behalf of NetChoice, a trade association working to make the internet safe for free enterprise and free expression, we respectfully write in opposition to A4015, the misleadingly named Kids Code Act of New Jersey. While the bill pursues the noble goal of protecting children online and attempts to fix the constitutional pitfalls of similar legislation enacted in California, A4015 fails on both fronts. The bill actually doubles down on many First Amendment violations and, as NetChoice has attempted to make clear across the country: an unconstitutional bill protects no one.

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 oppose A4015 and instead use this bill as an opportunity to jumpstart a larger conversation about how best to protect minors online by enacting constitutionally sound legislation.

Core Provisions Are Unconstitutional Under the First Amendment

A4015 contains several constitutional defects. Chief among these defects is that A4015 effectively requires that social media companies perform age-verification for every user of its services. Laws containing similar defects as those in A4015 have already been challenged in federal court. Laws from Arkansas (*NetChoice v. Griffin*, 2023 WL 5660155 (W.D. Ark., Aug. 31, 2023) (enjoining Arkansas's parental consent and age-verification law to access social media for violation of the First Amendment)), California (*NetChoice v. Bonta*, 692 F.Supp.3d 924 (N.D. Cal. 2023) (enjoining California's Age-Appropriate Design Code Act for violation of the First Amendment) *aff'd in part* 113 F.4th 1101 (9th Cir. 2024)) and

Ohio (*NetChoice v. Yost*, 716 F.Supp.3d 539, 552 (S.D. Ohio 2024) (enjoining Ohio's parental consent for social media law as unconstitutional under the First Amendment)) are currently enjoined. Similarly, South Carolina's age-appropriate design code is currently subject to legal challenge (*NetChoice v. Wilson,* 2026).

A4015 attempts to steer private platforms towards an age-verification regime without formally mandating one, hoping that this will save the legislation from any challenge. The bill's actual knowledge standard is extremely expansive, and functions more like a "reason-to-know" standard. This means that companies will have no choice but to collect, and for a period of time store, sensitive user data in order to formally determine the age of every user to avoid liability.

The internet has made information, discourse, and speech "as diverse as human thought" readily accessible (*Packingham v. North Carolina*, 582 U.S. 98, 105 (2017)). And the First Amendment prohibits the government from restricting the ability to access, receive, or engage in online speech (*See Bd. of Educ. v. Pico*, 457 U.S. 853, 867 (1982)). Indeed, the First Amendment's protections are enjoyed by minors and adults alike (*Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) (holding that minors enjoy First Amendment rights)). When challenged, the Supreme Court has consistently reaffirmed this bedrock First Amendment principle (*See e.g., Mahanoy Area Sch. Dist. v. B.L.*, 141 S.Ct. 2038 (2021)).

The fact that A4015 covers the internet rather than books, television programs, or video games, does not change the First Amendment issue (*Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 856 (1997) (holding that the First Amendment applies to the internet)). Social media websites provide access to speech on topics ranging from religious worship and political dialogue to sharing recipes and offering well-wishes. And the Supreme Court has made clear that the government lacks the "free-floating power to restrict the ideas to which children may be exposed" (*Brown v. Entertainment Merchants Association*, 564 U.S. 786, 794 (2011)).

If passed, A4015 would violate minors' First Amendment rights by depriving anyone who refuses to comply with its requirements of access to the veritable panoply of protected speech available on social media sites. By prohibiting access to speech, the First Amendment applies (*Yost*, 716 F.Supp.3d at 552 (There is no "contract exception" to the First Amendment.")).

Online Speech Codes are Already Losing in Court

A4015 largely mirrors California's unconstitutional Speech Code (itself an import from the United Kingdom) which would impose sweeping restrictions on online speech through an unconstitutional regulatory regime masquerading as a data privacy law. California's Speech Code was largely enjoined by a federal judge (those twice-enjoined provisions are duplicated in A4015). The judge prevented much of the law from going into effect because NetChoice, as the plaintiff, will "likely succeed…under the First Amendment." Like similar laws recently enjoined nationwide, A4015 violates bedrock First Amendment principles through content-based restrictions that trigger and fail strict scrutiny. In recent oral

arguments, the federal judge stated: “Nothing shown to me shows that the [state] Legislature cared one whit about the Constitution. [California’s AADC] was not designed to pass successfully through the filter of the First Amendment, and now [the State] is trying to reverse engineer it.” (*See* Dorothy Atkins, *Calif. Kids’ Privacy Law Ignores 1st Amendment*, Judge Says, Law360 (Jan. 23, 2025).

New Jersey’s Speech Code is similarly likely to run afoul of the First Amendment due to its strong inducement for online platforms to over-censor content in order to avoid being penalized under the law’s vague concept of what might be harmful to minors. A4015 prohibits covered entities from processing children’s data in any way that presents a “heightened risk” of, among other things, “financial or physical injury,” an “intrusion upon the solitude or seclusion” that would be “offensive to a reasonable person,” or “unfair or deceptive treatment.”

These standards are extraordinarily vague and subjective, and carry penalties of up to $20,000 per violation. Additionally, since the enforcement is under New Jersey’s Consumer Fraud Act (CFA) and A4015 declares in Section 16(a) that a violation of the bill is a violation of the CFA as a whole, the bill likely engages the CFA’s private right of action with treble damages. Under threat of massive fines for misjudging what may be considered psychologically or emotionally harmful to children, many platforms will certainly default to taking down all content on entire subjects, which is likely to remove beneficial, constitutionally protected material along with anything genuinely harmful.

Make no mistake, we are talking about the government banning speech online. That is why the New York Times filed as amicus curiae supporting NetChoice in our lawsuit against California’s version of the Age Appropriate Design Code.

Age-verification Requires Massive Collection of Sensitive Personal Information

The Supreme Court has struck down online age-verification schemes because they infringe on access to broad swaths of speech and chill both potential speakers and willing listeners from entering the marketplace of ideas (*See Reno v. ACLU*, 521 U.S. 844, 855-857 (1997); *Ashcroft v. ACLU*, 542 U.S. 656 (2004)).

Parents, not governments, determine what languages their children learn (*Meyer v. Nebraska*, 262 U.S. 390 (1923)), what school to attend (*Pierce v. Society of Sisters*, 269 U.S. 510 (1925)), their religious upbringing (*Wisconsin v. Yoder*, 406 U.S. 205 (1972)) and so forth. Parents are responsible not only for these high-level decisions, but also the granular ones down to what vegetable their child should have with dinner. But A4015 flips the script and puts the government in the driver’s seat.

In fact, in certain respects, A4015 resembles California’s unconstitutional parental consent law for video games. The Supreme Court struck down California’s law over a decade ago.

California restricted the sale of violent video games to minors and required parental consent before a minor could make the purchase. The Court struck down the law because it did not enforce parental

authority. Instead, the law imposed *governmental authority* subject only to a parental veto (*Brown* 564 U.S. at 795, n. 3). Writing for the majority, Justice Scalia explained that because violence or violent content is protected expression under the First Amendment, the State could not restrict minors from accessing it (*Id*. at 802 quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 212-213 (1975) (explaining that the First Amendment does not permit the government to penalize third parties from disseminating speech just in case the parents disapprove of the speech)).

Indeed, A4015 is *more* troubling than the California scheme because its scope is not limited merely to "violent" content but applies to "social media companies" which offer a range of content including religious services, educational videos, advice on navigating mental health struggles and more.

Federal courts have already had occasion to pass on three different attempts to restrict access to the internet (and social media companies specifically) through age-verification and parental consent requirements. In every case, the court struck down the law as unconstitutional under the First Amendment.

Age-verification cuts to the heart of another core First Amendment protection: anonymity. The framers understood this point and valued anonymity as a tool for political engagement. It is not an exaggeration to say that we owe the existence of our constitutional system to anonymous speech (*See* Alexander Hamilton, James Madison & John Jay, The Federalist Papers (Clinton Rossiter, 2003); The Anti-Federalist Papers (Ralph Louis Ketcham, 2003). The essays supporting and opposing ratification of the Constitution in these papers were published pseudonymously). The Supreme Court has explicitly affirmed that the First Amendment covers the right to speak anonymously (*McIntyre v. Ohio Elections Commission,* 514 U.S. 334, 357 (1995) (internal citations omitted)) and has repeatedly struck down age-verification schemes finding that they would force users to "forgo the anonymity otherwise available on the internet" (*Griffin*, 2023 WL 5660155 at *17 quoting *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 99 (2d Cir. 2003)). A4015 would, therefore, face the same fate as the Arkansas law.

Conclusion

Rather than enacting clearly unconstitutional laws banning the free speech of New Jersey residents, the state 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. Introducing legislation that educates young people and their parents on how to safely utilize online tools, giving law enforcement the resources they need to go after online scammers and predators, and updating existing CSAM and revenge pornography laws to keep pace with evolving technologies are just some of the ways that state government is empowered to protect their citizens without trampling on their First Amendment rights. Censorship is not child safety, and an unconstitutional law protects no one.

Again, we respectfully ask that you oppose A4015. As always, we offer ourselves as a resource to discuss any of these issues with you in further detail, and we appreciate the opportunity to provide the committee with our thoughts on this important matter.

Sincerely,

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

[1] The views of NetChoice expressed here do not necessarily represent the views of all NetChoice members.