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Coalition Calls on State Lawmakers Across the Country to Oppose to Age Verification Legislation

We, the undersigned organizations, representing millions of taxpayers and consumers nationwide, write to express our opposition to mandated online age verification legislation across the country. Protecting children is an important government concern. However, these bills would pose a significant threat to the free speech rights of all Americans and the data privacy risks posed run counter to the stated intentions of such legislation.

Technology has become essential in Americans' daily lives, and its use is now simply second nature. Whether it's keeping up with friends, seeking out information instantaneously, or staying entertained, the online world is intertwined with our real-world experiences. Yet, politicians feel increasingly pressed to shield America's children from a series of potential harms.

In Congress and state legislatures across the country, some lawmakers have turned to age verification legislation, which would put the onus on technology companies – including device manufacturers, app stores, websites and internet service providers (ISPs) – to identify underage users and block them from certain apps or online content. However, these broad age verification mandates present serious risks of government overreach and even threaten to undermine efforts to keep children safe online.

Broad age verification proposals raise serious constitutional concerns. In the past, the Supreme Court has struck down similar laws restricting users from certain kinds of content for violating the First Amendment.¹ Age verification proposals present the same problems. Moreover, age verification laws place unconstitutional burdens on adult speech, as courts have ruled. Many federal courts have enjoined such statutes, across states like Arkansas², Ohio³, Texas⁴, Utah⁵, and others. Legislators now considering age verification legislation for their own state should realize that any such law will spend years tied up in costly legal battles – at taxpayers' expense – only to lose on First Amendment grounds that have already been settled by the courts.

District Judge Timothy L. Brooks' decision blocking a 2023 Arkansas age-verification mandate provides insight. Citing *Reno v. ACLU* (1997), which struck down the Communications Decency Act, Judge Brooks wrote, "Requiring adult users to produce state-approved documentation to prove their age and/or submit to biometric age-verification testing imposes significant burdens on adult access to constitutionally protected speech and 'discourage[s] users from accessing [the regulated] sites.'" According to ample caselaw, this sort of "discourage[ment]" itself unconstitutionally burdens adult users seeking to make use of their speech rights. "It is likely that many adults who otherwise would be interested in becoming account holders on regulated social media platforms will be deterred – and their speech chilled – as a result of the age-verification requirements," Judge Brooks continued.⁶

A common trope offered in defense of age-verification mandates is that technology has progressed so far as to eliminate the concerns which once rendered such mandates unconstitutional. This is mistaken, as recognized by European policy makers and U.S. courts. The Commission Nationale de l'Informatique et des Libertés (France's data protection agency) found that "there is currently no solution that satisfactorily meets...three requirements [i.e., accuracy, wide usability, and respect for privacy]."⁷

In addition to the legal hurdles facing age verification legislation, age verification mandates are ineffective. Children and teenagers can simply access harmful online materials through different access points such as laptops, cell phones, or accounts owned by an adult, or with the use of a virtual private network (VPN).

¹ <https://supreme.justia.com/cases/federal/us/535/564/>

² <https://www.aclu.org/press-releases/judge-blocks-arkansas-law-that-would-have-placed-unconstitutional-age-verification-and-parental-consent-requirements-on-social-media-users>

³ <https://www.hunton.com/privacy-and-information-security-law/ohio-social-media-age-verification-and-parental-consent-law-temporarily-blocked>

⁴ <https://apnews.com/article/pornography-age-verification-texas-unconstitutional-48af1b99434cdfdd12351f555aeab11>

⁵ <https://www.protectingtaxpayers.org/free-speech/utahs-unconstitutional-social-media-legislation-halted-in-court/>

⁶ <https://arkansasadvocate.com/wp-content/uploads/2023/08/brooks-injunction-smsa.pdf>

⁷ <https://www.cnil.fr/en/online-age-verification-balancing-privacy-and-protection-minors>

Comparisons of online age verification to offline ID checks fall flat. Showing an ID to a store clerk does not mean that data is automatically stored and linked with other activity. However, a user who wants to verify his or her age online will most likely be required to submit government documentation or undergo a facial scan. This clearly threatens Americans' privacy and data security far more than merely flashing an ID. The risk here is not hypothetical. Recently, a digital age verification service utilized in Australia for access to physical locations such as bars and nightclubs was breached, exposing sensitive information of over a million Australians.⁸

Parents, communities, schools, government officials, and tech companies must seriously consider their roles in the mental and social wellness of children and take steps to protect them online. Policymakers in some states have taken steps designed to empower parents and spread awareness about the numerous tools currently available on the market to protect children. For example, Utah Governor Spencer Cox has launched a public service campaign to encourage parents to play a greater role in their children's online experiences and to draw attention to the parental controls currently available on most devices.⁹ These controls are often easy to access, take seconds to set up, and allow parents to restrict not only internet content but also the types of applications that children can download. Other states have worked to prepare children to navigate online dangers. In Florida, children receive education about the risks associated with social media and other harmful online content.¹⁰

Children must be protected online as well as offline, and lawmakers are right to work toward solutions that will protect children online. However, broad age verification mandates violate the First Amendment and endanger Americans' privacy and data security. Moreover, it is unclear that they would succeed in making the internet safer for children. Instead, lawmakers must put focus on empowering parents and communities to create a safe and healthy online experience for their children.

We appreciate the opportunity to raise these crucial issues.

Sincerely,

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⁸ <https://www.techdirt.com/2024/05/03/hours-after-aussie-govt-greenlights-online-age-verification-pilot-mandated-verification-database-for-bars-is-breached/>

⁹ <https://governor.utah.gov/press/gov-cox-launches-new-harms-of-social-media-public-awareness-campaign/>

¹⁰ <https://www.fl DOE.org/core/fileparse.php/18736/urlt/SocialMediaStandards.pdf>

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