

Senate State Affairs Committee

Wednesday, February 28, 2024 - 8:00 A.M.

TESTIMONY ON: All Subjects

Written Testimony

| Name (First & Last) | Subject | Manner Testifying | Representing Company/Organization | City | For / Against | Wish to Testify | District # |
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| Kent Burns | S 1252 | IP | Defend the Guard | Meridian | For | Y | 21 |

I have prepared statements.

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| Amy Dundon | H 498 | W | American Civil Liberties Union of Idaho | Nampa | Against | N | 13 |
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WRITTEN TESTIMONY OPPOSING HOUSE BILL 498
SUBMITTED TO THE IDAHO SENATE STATE AFFAIRS COMMITTEE
FEBRUARY 27, 2024, ON BEHALF OF THE
AMERICAN CIVIL LIBERTIES UNION OF IDAHO

Chairman Guthrie and Members of the Committee,

I submit this testimony on behalf of the ACLU of Idaho and in strong opposition to House Bill 498 (HB 498). If passed, HB 498 would impermissibly burden access to protected speech by requiring users to verify their age before accessing legal adult content online. HB 498, if allowed to go into effect, would require internet users to provide personal information, such as government-issued identification, to companies or third parties that purport to be able to verify their ages. Such “filters” or “screens” may block some people, such as those without necessary identification or those whose identification is mis-identified by the technology, from accessing certain internet sites altogether.

Courts have repeatedly found age verification requirements like those outlined in HB 498 unconstitutional. The landmark U.S. Supreme Court case, *Reno v. American Civil Liberties Union*, held that the government can no more restrict a person’s access to materials on the internet than it can ban books based on content. At least in part, the rationale to reject age verification requirements is rooted in constitutional privacy protections.

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| Amy Dundon | cont. | | | | | | 13 |

More fundamentally, the court’s rejection of internet filters, including age verification, indicates such filters threaten protected speech rights. This is particularly true where a less restrictive alternative to such censorship exists. Indeed, in the case of HB 498, a less restrictive alternative does exist: users’ voluntary installation of filters on personal devices, for instance, would not limit protected speech, impose invasive age verification processes for adults, and would likely achieve the desired legislative intent outlined in the bill.

In September 2023, a judge blocked an Arkansas law that would have placed unconstitutional age-verification burdens on internet users.¹ Meanwhile, in Texas, an internet age-verification bill strikingly similar to HB 498 is being challenged in court.² And in Montana, the court halted a content-based internet censorship law; the opinion stated such censorship “oversteps state power and infringes on the Constitutional rights of users and businesses.”³

The ACLU has long-defended the freedom of expression – a precious right enshrined in our constitution – including online freedom of expression. HB 498 would force users to hand over personal and private information to companies or third parties to access protected speech online. HB 498 encroaches on the free speech rights of all users that seek access to regulated websites, robbing them of anonymity, and likely chilling privacy- and security-minded people from accessing these websites at all. Such a sweeping ban on free expression triggers the most exacting scrutiny under the First Amendment and tramples on the free speech of Idahoans. We respectfully urge you to vote against HB 498.

Amy Dundon, Legislative Strategist, ACLU of Idaho

1. NetChoice, LLC v. Griffin, No. 5:2023cv05105 (W.D. Ark. 2023)
2. Free Speech Coalition, Inc et al v. Colmenero No. 1:2023vc00917 (W.D. Tex. 2023).
3. Alario v. Knudsen Lead CV 23-56-M-DWM (D. Mont. Nov. 30, 2023)