Written Testimony of
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Kentucky General Assembly
Re: Artificial Intelligence and Freedom of Speech
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Thank you for the opportunity to testify regarding artificial intelligence and the First Amendment. My name is John Coleman, and I serve as legislative counsel on AI and free expression for the Foundation for Individual Rights and Expression (FIRE), a non-partisan non-profit that defends free expression for all Americans.

This testimony addresses how existing First Amendment doctrine applies to AI-related regulations. While the use of AI tools raises some novel policy questions, the constitutional framework governing the state's regulation of speech is well established and provides clear guidance for lawmakers considering AI-related legislation.

I. AI is an expressive tool under the First Amendment.

The First Amendment limits the government's authority to regulate how people communicate ideas. Although this constitutional amendment was adopted long before modern technologies like radio, television, and the internet, its principles have proven both durable and adaptable as new forms of communication emerge.

AI fits squarely within this tradition. It is a tool people use to communicate, seek information, and engage in creative expression. When individuals design, deploy, or use AI systems for these purposes, that activity is protected by the Constitution in the same manner as other forms of human communication.

II. The First Amendment places clear constitutional limits on the regulation of speech involving artificial intelligence.

The First Amendment limits government authority to regulate AI when such regulation burdens the free speech rights of developers or users, including the right to receive and share information,

the right to speak anonymously, and the right to be free from compelled speech.[1] When AI systems are used as tools for communicating or exchanging information, these constitutional protections apply in the same manner as they do to other expressive technologies.

These rights are implicated when, for example, the law:

- Restricts who may access an AI system or limits protected expression that a general-purpose chatbot may provide;

- Prohibits individuals, businesses, or organizations from using AI to generate or distribute protected expression;

- Requires users to verify, or otherwise reveal, their identity before interacting with expressive AI tools; or

- Mandates government-prescribed labels, watermarks, warnings, or messages on AI-generated content.

These kinds of regulations face substantial constitutional risk. Recent litigation against state laws regulating social media platforms illustrates how courts analyze such restrictions and why similar regulatory approaches in the AI context are legally vulnerable.[2] These cases are instructive because the laws challenged in those cases closely resemble the regulations now being considered for AI.

Laws that control what speech a platform can host or an expressive tool may generate, require identity verification to access information online, or mandate warnings or disclosures for lawful speech function in legally similar ways, whether applied to social media platforms or to AI systems. They allow the government to block access to information, decide how ideas can be communicated, and force speakers to add government-approved messages to their own speech.

The First Amendment does not permit these kinds of burdens on Americans' speech, and courts are striking down state laws that impose them in the context of speech on social media platforms. AI regulations that use these same mechanisms are likely to face similar constitutional scrutiny.

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[1] *See Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (right to receive lawful information and ideas); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995) (right to speak anonymously); *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (right against compelled speech); *Packingham v. North Carolina*, 582 U.S. 98, 104–05 (2017) (right to share and disseminate speech through modern communications technologies).

[2] *See*, *e.g.*, *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024) (holding that laws regulating the expressive choices of online platforms trigger First Amendment scrutiny); *NetChoice, LLC v. Yost*, 778 F. Supp. 3d 923 (S.D. Ohio 2025) (enjoining a law that imposed disclosure and access requirements on social media platforms); *NetChoice, LLC v. Griffin*, No. 5:23-cv-05005, 2023 WL 5660155 (W.D. Ark. Aug. 31, 2023) (enjoining a social media age-verification law for burdening the right to receive information and speak anonymously).

Already, courts are beginning to extend First Amendment doctrines to AI-related legislation. In 2024, a federal court struck down California's election-related deepfake statute, concluding that its restrictions on AI-generated political content and accompanying disclosure requirements violated the First Amendment.[3] While, of course, district courts in California do not bind the state of Kentucky, the court's reasoning, which draws on basic First Amendment doctrine, is a useful preview of how other federal courts may scrutinize restrictions on speech generated or edited with AI.

As more legal challenges are filed against regulations of AI-related speech, courts will develop the law further and give lawmakers more clarity as to how the First Amendment limits their authority in this area.[4]

III. Existing law provides the proper starting point for addressing AI-related harms.

New technologies like AI raise novel issues, but in seeking ways to address those issues, Kentucky is not starting from scratch. Existing state laws, including fraud statutes, consumer protection laws, defamation law, and civil rights statutes already address many harms that the misuse of artificial intelligence tools may invite.

Because these statutes are technology-agnostic, they are more likely to withstand constitutional scrutiny and more amenable to adaptation by enforcement agencies as the use of AI evolves.

If and where clarification of existing laws proves to be warranted, narrowly tailored amendments are preferable to broad, AI-specific regulatory regimes that risk sweeping in protected expression.

In that spirit, the General Assembly may wish to consider targeted revisions to last year's SB 4 to better align the law with First Amendment principles. As drafted, Sections 4 and 5 impose disclosure and assessment requirements tied to expressive uses of AI tools, which risk compelling speech and burdening core political expression.

Conclusion

By grounding AI policy in existing law and making modest, precise adjustments where proven necessary, Kentucky can address concerns about the proliferation of AI tools while preserving the First Amendment protections that have long preserved Americans' right to use new expressive technologies.

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[3] *See Kohls v. Bonta*, 752 F. Supp. 3d 1187 (E.D. Cal. 2024) (preliminary injunction); *Kohls v. Bonta*, 797 F. Supp. 3d 1177 (E.D. Cal. 2025) (permanent injunction).

[4] *See e.g., X Corp. v. Ellison*, No. 25-cv-1649, 2025 WL 1833455 (D. Minn. filed Apr. 2025) (no judgment on the merits to date).