



AI & the First Amendment

January 12, 2026

AI is a tool for expression. That's a good thing.



Printing Press

Lowered cost of
reproducing words



Radio/TV

One voice broadcast to
millions



The Internet

Anyone can publish

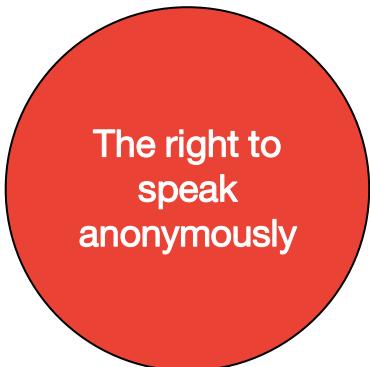


AI

Creates, organizes,
and scales
expression



First Amendment protections



Who the First Amendment protects



Developers

AI companies, designers, engineers, etc.



Users

Individuals prompting, or interacting with, AI



Deployers

Healthcare, retail, banking, social media, etc.



Sharers & Listeners

Internet/social media users (you, me, and Grandma)





Courts protect digital tools to communicate.

Regulatory focus	Principle	Who's affected	Key Precedent	Likely Practical Effect
AI Outputs (e.g., recommendations, predictions, or decisions generated by AI)	The rights to share & receive information	Developers Deployers Users	<i>Moody v. NetChoice</i>	AI outputs receive First Amendment protection.
Age Verification (e.g., providing ID to access AI)	The right to receive information & the right to speak anonymously	Users Sharers Listeners	<i>NetChoice v. Yost</i>	Age-verification mandates for expressive AI tools will raise serious constitutional concerns.
Disclosure Requirements (e.g., digital watermarks, labels, risk assessments, and notices)	Compelled speech prohibited & the right to speak anonymously	Developers Deployers	<i>NetChoice v. Bonta</i>	Compelling subjective, editorial, or overly burdensome disclosures are often held unconstitutional.

Look to existing laws to address AI-related harms.

Common Law (e.g.,
defamation)

Anti-Discrimination Law
(e.g., state/federal civil rights laws)

Economic & Commercial Regulation
(e.g., fraud, consumer protection, and deceptive trade practices)



Careful Lawmaking. Clear Rules.

Restraint

Avoid AI-specific regulatory regimes.

Clarity

Clarify existing AI laws.



Key Takeaways for the Committee

1

AI can be a tool for expression. That's a good thing.

Builders, speakers, and listeners are all protected by an array of rights derived from the First Amendment's guarantee of free speech.

2

Courts protect digital tools to communicate.

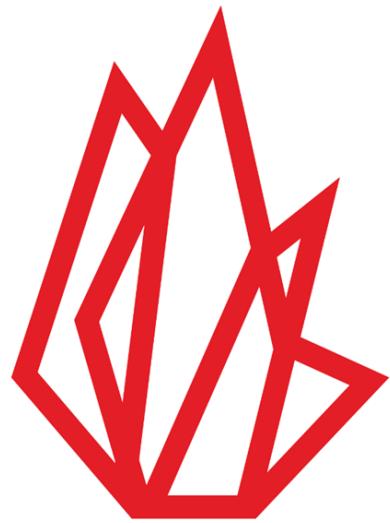
Time and again in the social media context, efforts to regulate what people see and say online have been rebuffed by the courts.

3

Look to existing laws to address AI-related harms.

Government officials already have the legal tools to protect consumers from fraud, and private litigants have the ability to guard their reputations and livelihoods.





FIRE

Foundation for Individual
Rights and Expression