

**Washington State
Senate Business, Trade and Economic
Development Committee**

TESTIMONY IN OPPOSITION

January 15, 2026

Dear Chair Kaufmann, Vice-Chair McClintock and Members of the House Committee on Consumer Protection and Business:

Thank you for the opportunity to provide testimony on behalf of NetChoice. 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 appreciate your attention to children’s online safety—a priority we share with this committee and concerned parents across Washington State.

Throughout history, books, movies, television, rock music, video games, and the Internet have all been criticized for posing risks to minors. Today’s social media platforms occupy the same cultural space, generating comparable debates about their impact on minors. These discussions matter, and all stakeholders—parents, educators, researchers, and lawmakers—have important roles to play in them. But one participant is conspicuously absent from the list of who should decide what young people can read, watch, or say: the government itself. The First Amendment draws a bright line, reserving that authority for families, not the state.

Despite this constitutional framework, we have witnessed a wave of state legislation in recent years attempting to interpose the government as the gatekeeper of minors’ online experiences. From Florida to Utah, from Texas to Ohio, state legislatures have enacted laws mandating age verification systems, requiring parental consent for account creation, and dictating platform design features—all in service of limiting what young people can see and say online. The legal results have been swift and unambiguous: these laws do not stand up to First Amendment scrutiny.

The past two years alone have produced a remarkable string of judicial rejections spanning the Ninth Circuit and district courts in Arkansas, Colorado, Florida, Georgia, Louisiana, Ohio, Texas, and Utah. Different circuits, different statutory schemes, different judges—yet the same constitutional defects appear in each case. These laws violate the First Amendment because they are not sufficiently tailored to achieve their stated goals. Worse, they accomplish the opposite of empowering parents: they replace parental judgment with state diktat.

The Supreme Court identified this precise problem in *Brown v. Entertainment Merchants Association* when it distinguished between two very different roles for government. On one hand, the state may legitimately help parents enforce their own decisions—if a parent tells a concert venue not to admit their child, the state can back up that parental choice. On the other hand, the state cannot simply decree that no child may attend any concert without obtaining advance parental permission. The former respects parental authority; the latter usurps it.

This is not a subtle distinction. Laws requiring blanket age verification and parental consent mandates do not give parents more control—they give the government control, subject only to a parent’s ability to override the restriction. The constitutional infirmity is inherent: the state has no authority to prevent young people from accessing fully protected speech unless their parents affirmatively grant permission. That inverts the proper relationship between families and government, making the state the default arbiter of what minors may read, watch, and discuss online.

We come before you today not as adversaries, but to share the experiences of other jurisdictions. NetChoice has closely monitored kids’ online safety legislation nationwide, and we have seen a troubling pattern: well-intentioned laws that are struck down by federal courts before they can take effect, wasting taxpayer resources and delaying real solutions. We want to work collaboratively with this committee to develop effective approaches that will withstand legal scrutiny and actually protect children.

The State of Play in Other Jurisdictions

Across the nation, states have rushed to enact laws restricting how minors access online content and services. The pattern is consistent: these laws are challenged immediately, preliminarily enjoined, and ultimately invalidated. The First Amendment provides robust protection for online speech, and courts have repeatedly found that state efforts to regulate internet content for minors run afoul of constitutional protections.

Most recently, federal courts have struck down age verification laws in both Arkansas and Louisiana. In *Free Speech Coalition v. Foti* (Louisiana) and *NetChoice v. Griffin* (Arkansas), courts found that mandatory age verification requirements for accessing lawful online content violated the First Amendment. The Arkansas law, S.B. 396, required social media companies to verify users’ ages and obtain parental consent for minors. In August 2023, the U.S. District Court for the Western District of Arkansas preliminarily enjoined the law, finding it likely unconstitutional because it imposed significant burdens on adults’ access to protected speech and was not narrowly tailored.

California’s Assembly Bill 976, the Protecting Our Kids from Social Media Addiction Act, signed into law in September 2024, represents a different regulatory approach than age verification mandates, but raises equally serious constitutional concerns. The law requires social media platforms to provide minors with a default “chronological feed” instead of algorithmically ranked content, restricts notifications to minors during nighttime hours and school hours, and limits other features deemed addictive. While the court did not decide on the constitutionality of the personalized feeds provision, the restriction on sending minors notifications was struck down.

Terms like “addictive feed” lack clear definitions, giving platforms little guidance on compliance while simultaneously exposing them to enforcement actions. This vagueness chills protected speech as platforms must guess at what features might be deemed impermissibly addictive and might err on the side of suppressing lawful speech in order to aim for compliance with the law. Moreover, by mandating specific design choices based on content presentation—how and when users see speech—California is directly regulating editorial functions that lie at the core of First Amendment protections. AB 976, like other state social media laws, also requires platforms to determine which users are minors—a requirement that creates significant practical and constitutional difficulties.

Constitutional Concerns with Washington's Proposed Approach

We understand that Washington came close to passing addictive feeds legislation last year and the legislation is expected to be introduced again this year. The bill’s core provisions prohibit operators from providing addictive feeds to minors unless the operator has reasonably determined the user is not a minor. The bill also restricts push notifications during nighttime and school hours unless operators obtain parental consent.

A prohibition on providing addictive feeds to minors is a content and design-based restriction that burdens constitutionally protected speech. Such a law still regulates how platforms present lawful content to users based on editorial algorithms—a core First Amendment activity. Courts have consistently held that such restrictions on curatorial and editorial functions are subject to strict scrutiny, which requires the government to use the most narrowly tailored and least restrictive means available. Mandating chronological feeds or prohibiting algorithmic curation is not narrowly tailored, particularly when less restrictive alternatives exist, such as parental control tools that platforms already offer.

It is important to address a common misconception: personalized feeds are not inherently unsafe for children. In fact, when properly designed, personalized algorithms serve as powerful safety tools. These systems can filter out harmful content, reduce exposure to bullying and harassment, and surface age-appropriate educational and entertainment content that matches a young person’s interests and developmental needs.

Personalization allows platforms to learn what content keeps children engaged in positive ways—whether that’s science experiments, art tutorials, sports highlights, or educational videos. The same technology that can recommend content can also identify and demote harmful material before children ever see it. Chronological feeds, by contrast, provide no filtering mechanism and expose users to whatever content appears in their network, regardless of its appropriateness. Mandating chronological-only feeds for minors would actually remove an important layer of protection and curation that helps keep young users safe.

While the new draft bill attempts to address privacy concerns by prohibiting the use of personal information collected for age determination for other purposes, this provision does not eliminate the fundamental privacy and security risks created by age determination requirements. Operators must still

collect, process, and store sensitive personal data to comply with the law, creating the honeypots of verified identity information that attract hackers and data breaches. The privacy protections in Section 7 do not prevent the initial collection—they merely restrict subsequent use, which offers little comfort when the database is compromised.

A Path Forward: Empowering Parents Without Constitutional Violations

Washington State should learn from the legal failures in other jurisdictions. Enacting legislation that mirrors struck-down laws in Arkansas, Louisiana, or California would waste state resources defending an unwinnable case and delay actual solutions to the legitimate concerns parents have. Rather than rushing forward with constitutionally suspect mandates, we urge this committee to work collaboratively with stakeholders, including the technology industry, to develop tools and resources that empower parents without violating the First Amendment.

Everyone here wants the internet to be a safer place for kids — but we can't get there by compromising the privacy, speech rights, and independence of every user. At NetChoice we believe focusing instead on digital literacy, transparency, and helping parents guide their children online — without building a surveillance system that treats every American like a child is the best and most constitutionally sound approach. We stand ready to assist this committee in finding constitutionally sound pathways forward.

Thank you for your consideration.

Sincerely,

Amy Bos
Vice President Government Affairs
NetChoice

NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.