

## Iowa HF 526

## OPPOSITION TESTIMONY

March 29, 2023

Iowa House of Representatives  
Ways and Means Subcommittee

Dear members of the committee:

We respectfully ask that you **oppose** HF 526. The bill's goal is laudable and one NetChoice supports. But its chosen means are unconstitutional by imposing prior restraints on online speech, erecting barriers to sharing and receiving constitutionally-protected speech, and by providing only vague notice to online businesses as to what the law prohibits. The Supreme Court struck down a similar law in 1996 after finding that "knowing... minors are likely to access a website—and therefore create liability for the website—would... [place] an unacceptably heavy burden on protected speech."<sup>1</sup>

NetChoice has an active First Amendment lawsuit against California for its nearly-identical Age-Appropriate Design Code (AB 2273) for these reasons.<sup>2</sup> To avoid unnecessary litigation, this committee should not advance HF 526 while this litigation is pending. HF 526:

1. Violates the First Amendment;
2. Litigation is already underway over an identical law in *NetChoice v Bonta*;
3. Comes with many other problems, as outlined in the attached slide deck.

### Like California's AADC, HF 526 Violates the First Amendment

Requiring identity authentication of all users adds several unconstitutional barriers to sharing and accessing First Amendment-protected online speech. First, HF 526's mandatory identity verification

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<sup>1</sup> *Reno v. ACLU*, 521 U.S. 844, 849 (1996).

<sup>2</sup> Available at <http://bit.ly/3ZjVMFs>.

requirements prevent anonymous and pseudonymous browsing. Second, HF 526 unconstitutionally restricts both adults' and minors' access to First Amendment-protected content. Laws that chill and restrict Americans' speech in this way are unconstitutional under the First Amendment unless they pass strict scrutiny; a stringent test HF 526 will surely fail.<sup>3</sup> Third, HF 526 violates online services' well-established First Amendment right to editorial discretion.

First, HF 526's requirement for online services to collect PII of anyone who visits their websites functionally eliminates all unattributed activity and content on the Internet. This would hurt many communities, such as political minorities concerned about revealing their identity. The Supreme Court has repeatedly affirmed the First Amendment provides robust protection for anonymous speech as “. . . a shield from the tyranny of the majority. . . . It exemplifies the purpose behind the Bill of Rights and of the First Amendment in particular: to protect unpopular individuals from retaliation . . . at the hand of an intolerant society.”<sup>4</sup> HF 526 violates this principle.

Second, HF 526 unconstitutionally restricts Iowans' access to digital content on account of their age. In *Reno v. ACLU*, the Supreme Court struck down a similar law to HF 526, the Communications Decency Act of 1996, after finding that “knowing. . . minors are likely to access a website—and therefore create liability for the website—would surely burden communication among adults,” placing an “unacceptably heavy burden on protected speech.”<sup>5</sup> The Court wrote that “the interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit” to children.<sup>6</sup> For this reason, NetChoice is currently suing<sup>7</sup> California over its similar law, the Age-Appropriate Design Code.<sup>8</sup>

Laws that restrict Americans' access to digital content on account of age are unconstitutional under the First Amendment unless they pass strict scrutiny.<sup>9</sup> To survive strict scrutiny, a law must be

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<sup>3</sup> See, e.g., *Reno v. ACLU*, 521 U.S. 844 (1997); *Ashcroft v. ACLU (Ashcroft II)*, 542 U.S. 656 (2004).

<sup>4</sup> *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995).

<sup>5</sup> *Reno v. ACLU*, 521 U.S. 844, 849 (1996).

<sup>6</sup> *Id.* at 885.

<sup>7</sup> Available at <https://bit.ly/3jiMhXy>.

<sup>8</sup> Available at <https://bit.ly/3RkFrh2>.

<sup>9</sup> See, e.g., *Reno v. ACLU*, 521 U.S. 844 (1997); *Ashcroft v. ACLU (Ashcroft II)*, 542 U.S. 656 (2004).

narrowly tailored to achieve a compelling government interest.<sup>10</sup> The government nearly always fails this test—in state after state, courts have invalidated restrictions on internet communications or content deemed harmful to minors.<sup>11</sup> HF 526 will be no different.

While the Supreme Court has acknowledged that the government has an important interest in children’s welfare<sup>12</sup>, Iowa “must specifically identify an ‘actual problem’ in need of solving” to establish a “compelling interest.”<sup>13</sup> In *Brown v. Entertainment Merchants’ Ass’n*, the Supreme Court invalidated California’s ban on the sale of violent video games to minors. The Court held that California failed strict scrutiny because (1) violent video games are constitutionally protected speech and (2) the state’s “predictive judgments” that such games cause aggression in minors was not aimed at an actual problem. Indeed, the State’s interest was not compelling because “without direct proof of a causal link” between video games and aggression, the State was merely speculating about a potential problem.

Nor is HF 526 narrowly tailored. For example, a federal district court enjoined Louisiana’s attempt to block minors from accessing “harmful” content as substantially overbroad.<sup>14</sup> Compliance with HF 526 also violates First Amendment-protected editorial discretion. Covered entities may have community standards that allow for anonymous browsing or posting; policies which fall squarely within the First Amendment’s protection.<sup>15</sup> Many online services have policies against collecting data from users. Yet those that place a premium on privacy must violate their principles by forcing users—including adults—to prove their identity before accessing digital content, and retain that PII however Iowa rulemakers prefer.

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<sup>10</sup> *Reno*, 521 U.S. at 874.

<sup>11</sup> See, e.g., *American Booksellers Foundation v. Sullivan*, 799 F. Supp. 2d 1078 (D. Alaska 2011); *American Booksellers Foundation v. Coakley*, 2010 WL 4273802 (D. Mass. 2010); *PSINet, Inc. v. Chapman*, 362 F.3d 227 (4th Cir. 2004).

<sup>12</sup> See *Sable Commc’ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989) (“We have recognized that there is a compelling interest in protecting the physical and psychological well-being of minors.”); *Denver Area Ed. Telecomms. Consortium, Inc. v. FCC*, 518 U.S. 727, 743 (1996) (identifying “the need to protect children from exposure to patently offensive sex-related material” as an interest “this Court has often found compelling”).

<sup>13</sup> *Brown v. Entertainment Merchants’ Ass’n*, 564 U.S. 786, 799 (2011) (invalidating California’s attempt to ban minors from accessing “violent” video games because violent video games are protected speech).

<sup>14</sup> *Garden Dist. Book Shop, Inc. v. Stewart*, 184 F. Supp. 3d 331, 339 (M.D. La. 2016) (“The Supreme Court held that content-filtering was less restrictive and more effective than COPA and, under the facts presented here, this Court is compelled to reach the same conclusion.”).

<sup>15</sup> See generally, *Netchoice v. Moody*, No. 21-12355 (11th Cir. May 23, 2022).

Third, HF 526 violates First Amendment-protected editorial discretion by imposing liability on covered entities when their “practice, design, or feature” causes “a Iowa minor account holder to become addicted to the social media platform.” Indeed, under the current version of HF 526, users may sue to recover damages for any self-reported “financial, physical, or emotional harm suffered as a consequence of using or having an account on the social media company's social media platform.” Because covered entities have the First Amendment right to decide which messages to host, how to curate those messages, and how to disseminate them, HF 526 provision allowing lawsuits against them for doing just this violates the First Amendment.<sup>16</sup>

### **HF 526 Puts Minors’ Sensitive Data at Risk**

HF 526 was ostensibly introduced to protect children but instead it puts children’s sensitive data at greater privacy and security risks. For social media companies to comply with HF 526’s command “to verify the age of Iowa residents,” they must force every user to to turn over extremely sensitive PII.

Large-scale mandatory collection of highly sensitive government identification data increases the risks that it will be captured and misused. With this legislation, Iowa is mandating that data be amassed under HF 526 is some of the most sensitive and potentially dangerous possible.

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Given its unconstitutionality and risks to children’s data privacy that these bills pose, we ask you to **not move forward** with HF 526. As ever, we offer ourselves as a resource to discuss any of these issues with you in further detail and appreciate the opportunity to provide the committee with our thoughts on this important matter.

Sincerely,

Carl Szabo  
Vice President & General Counsel  
NetChoice

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

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<sup>16</sup> *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (“[t]he choice of material . . . the decisions made as to limitations on the size and content . . . and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment.”)