

Florida SB 1448

OPPOSITION TESTIMONY

Jan. 29, 2023

Florida Senate Commerce and Tourism Committee

NetChoice respectfully asks that you **oppose** SB 1448, legislation which would actually require foreign supported websites to collect more information on Floridians as a result of its age verification for the use of a social media platform.

At the same time, country-of-origin based laws, when it comes to privacy and security, rarely make sense as these threats should be protected against regardless of their origin.

In addition, SB 1448 has significant constitutional flaws under the First Amendment.

For these reasons we ask you not advance SB 1448 as it:

1. Puts Florida residents' privacy and data at risk, leaving them vulnerable to breaches and crime;
2. Violates the First Amendment;
3. Creates a focus on foreign threats which can lead law enforcement to overlook domestic threats.

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 share the sponsor's goal to better protect against undue foreign influence on America.

1. SB 1448 would put Florida's residents' privacy data at risk, leaving them vulnerable to breaches and crime.

SB 1448 requires identity-verification which requires the collection of incredibly sensitive personal information.

Any requirement to collect data raises concerns over security. Criminals and identity thieves are actively looking for any opportunity to exploit sensitive personal information for their own ends. As we know from recent experience, any time there is a store of sensitive information it becomes a prime target for identity thieves and other nefarious individuals. Even government agencies have fallen victim to these attacks.

Most recently, the Consumer Financial Protection Bureau (CFPB) suffered a massive breach; ironic since the purpose of the agency is to, in part, safeguard consumers. If our own government cannot appropriately safeguard these data, why would foreign governments fare better? Indeed, the presupposition of this bill is that the targeted foreign governments are themselves security risks. The Florida legislature's suggestion to gift these regimes the data of Florida citizens is profoundly misguided.

2. SB 1448's core provisions are unconstitutional under the First Amendment.

SB 1448 contains several constitutional defects. Chief among them are the requirements that advertisements are banned unless significant data collection and verification occurs.

The First Amendment prohibits the government from restricting an individual's ability to access lawful speech, engage in discourse, express opinions, and more. Indeed, the right of free speech is enjoyed by minors and adults alike.¹ When challenged, the Court has consistently reaffirmed this bedrock First Amendment principle.²

The courts have recognized the First Amendment rights of individuals, businesses, politicians, and nonprofits to engage in advertisements. However, SB 1448 would forbid those rights by default on selected websites.

Identify-Collection & Verification

SB 1448 would require select businesses to engage in a cumbersome process of identify-verification for all users seeking to take out an advertisement. The bill even requires that service be denied to anyone who does not undergo identity-verification.

¹ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) (holding that minors enjoy First Amendment rights).

² See e.g., *Mahanoy Area Sch. Dist. v. B.L.*, 141 S.Ct. 2038 (2021).

But requiring identify-verification cuts to the heart of another core First Amendment protection: anonymity. The framers understood this point and valued anonymity. It is not an exaggeration to say that we owe the existence of our constitutional system to anonymous speech.³ The Supreme Court has explicitly affirmed that the First Amendment covers the right to speak anonymously⁴ and has repeatedly struck down age-verification schemes⁵ finding that they would force users to “forgo the anonymity otherwise available on the internet.”⁶

3. Creates a focus on foreign threats which can lead law enforcement to overlook domestic threats

Country of origin based legislation rarely achieves the problems it's trying to solve when it comes to privacy and security. This is because these threats are found in non-listed nations as well as within the United States itself. Instead of the country-of-origin approach any legislation to protect Americans should instead set uniform standards that apply to all actors equally and that target the actual underlying concerns. Doing otherwise is a recipe for unintended consequences.

Indeed, what matters is security, not country of origin. That is because a foreign country's popularity among Americans—whether justified or not—does not render an action safe and secured or unsafe and unsecured. If it did, then the amendment would presumably ban drones from countries in the Middle East and Eastern Europe. In fact, it would even have to include technology from some of our allies.

Ultimately, Florida would be better served by redoubling its legislative efforts to improve online literacy for its citizens. We believe educating citizens about how to use social media in a safe and responsible manner and how to spot deceptive ads regardless of their location or origin is better and more effective than heavy handed government mandates.

³ See ALEXANDER HAMILTON, JAMES MADISON & JOHN JAY, THE FEDERALIST PAPERS (Clinton Rossiter, 2003); THE ANTI-FEDERALIST PAPERS (Ralph Louis Ketcham, 2003). The essays supporting and opposing ratification of the Constitution in these papers were published pseudonymously.

⁴ *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 357 (1995) (internal citations omitted).

⁵ E.g. *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 662, 667 (2004); *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 856 (1997); see also *NetChoice v. Griffin*, 2023 WL 5660155, at *17.

⁶ *Id.* quoting *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 99 (2d Cir. 2003).

Again, we respectfully **ask you to oppose SB 1448**. As always we offer ourselves as a resource to discuss any of these issues with you in further detail, and we appreciate the opportunity to provide the committee with our thoughts on this important matter.⁷

Sincerely,

Carl Szabo

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NetChoice is a trade association that works to protect free expression and promote free enterprise online.

⁷ The views of NetChoice expressed here do not necessarily represent the views of NetChoice members.