

Virginia SB 854

OPPOSITION

March 31, 2025

RE: Why The Virginia General Assembly should not enact [SB 854](#) – with or without the Governor’s amendments

Dear Speaker Scott and Members of the Virginia House of Delegates:

On behalf of NetChoice, a trade association working to make the Internet safe for free enterprise and free expression, we strongly urge you to **reject Senate Bill 854 – with or without Governor Youngkin’s proposed amendments.**

SB 854 presents significant First Amendment concerns. As the Supreme Court recognized last year in the *NetChoice* opinion, the First Amendment “does not go on leave when social media are involved.”¹ Indeed, social media websites are home to vast amounts of protected speech on issues “as diverse as human thought.”²

Yet, SB 854 rations access to protected speech for minors by limiting them to one hour per day to listen, watch, or share on “social media platforms” . Such rationing cannot be squared with the First Amendment interests of minors in engaging in protected speech free of government interference.³

Governor Youngkin has returned SB 854 to the Virginia General Assembly with suggested amendments. Unfortunately, the Governor’s amendments only increase the gravity of First Amendment concerns with SB 854, and expands the reach of Virginians whose rights to access speech and expression would be violated.

As courts across the country have recognized, the government may not, consistent with the First Amendment, restrict minors’ access to social media websites.⁴ Indeed, as Justice Scalia memorably put it, such restrictions “do not enforce *parental* authority over children’s speech and religion; they impose *governmental* authority, subject only to a parental veto.”⁵

¹ *Moody v. NetChoice*, 603 U.S. 707, 719 (2024).

² *Packingham v. North Carolina*, 582 U.S. 98, 105 (2017) (quoting *Reno v. ACLU*, 521 U.S. 844, 870 (1997)).

³ *Erznoznik v. Jacksonville*, 422 U.S. 205, 212-13 (1975) (“[M]inors are entitled to a significant measure of First Amendment protection, . . . and only in relatively narrow and well-defined circumstances may government bar dissemination of protected materials to them.”)

⁴ See e.g., *NetChoice v. Yost*, 716 F.Supp.3d 539 (S.D. Ohio 2024) (enjoining a law restricting access to social media websites for minors under sixteen absent parental consent); *NetChoice v. Reyes*, ___ F.Supp.3d ___ (D. Utah 2024) (similar); *NetChoice v. Fitch*, 738 F.Supp.3d 753 (S.D. Miss. 2024) (similar).

⁵ *Brown v. Entertainment Merchants Association*, 564 U.S. 786, 795 n.3 (2011).

Accordingly, the proposed amendments to SB 854 are rife with the same constitutional infirmities that have plagued other state legislatures' efforts. The policies in Governor Youngkin's amendments were passed by the State of Utah in 2023 as part of Utah SB 194. That law was enjoined by a US District Court last September after NetChoice brought suit on First Amendment grounds.⁶ Given these constitutional defects, these laws *fail* to advance the goal of protecting minors' safety online.

Rather than repeat the mistakes from other states, Virginia should learn from them and build on its landmark digital education initiative. Educating students is important, but so is educating *parents*. One way Virginia could ensure parents have the resources to oversee how their families engage online is by providing resources to school districts and local PTAs to demonstrate how to use the panoply of existing parental controls and where to find them. This could be as simple as providing funding for a meeting at the beginning of each school year to go over these tools for parents—especially as their children are entering middle and high school.

Providing parents with the knowledge of how to navigate and make use of these tools empowers *parents* and helps ensure that parents, not the government, stays in the drivers' seat for their families. By continuing to lead the country in innovating educational campaigns, Virginia can move the needle for internet safety work across the country while demonstrating that this important work doesn't have to come at the expense of Americans' constitutional rights.

Sincerely,

Steve DelBianco
President & CEO
NetChoice

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

⁶ *NetChoice v. Reyes*, ___ F.Supp.3d ___ (D. Utah 2024)
<https://netchoice.org/wp-content/uploads/2024/09/NetChoice-v-Reyes-2024.09.10-ECF-86-ORDER-Granting-PI.pdf>