

Texas HB 186, an act relating to prohibiting use of social media platforms by children.

OPPOSITION TESTIMONY

May 15, 2025

Dear Chair Hughes, Vice Chair Paxton, and Members of the Senate Committee on State Affairs:

On behalf of NetChoice, a national trade association working to make the internet safe for free enterprise and free expression, we write to express our opposition to HB 186, which would require all users of social media to verify their ages and prohibit young people from accessing social media, even with verifiable parental consent.

We share the sponsors' goal to better protect minors from harmful content online. NetChoice members have taken issues of teen safety seriously and in recent years have rolled out numerous new features, settings, parental tools, and protections to better empower parents and assist in monitoring their children's use of social media. We ask that you oppose HB 186 and instead use this bill as a way to jumpstart a larger conversation about how best to protect minors online and consider alternatives that do not raise constitutional issues, such as greater law enforcement resources and online education and safety information for students and parents.

Key Concerns:

1. HB 186's core provisions are unconstitutional and are already being litigated in other states;
2. Age-verification presents heightened threats to privacy and undermines the state's interest in protecting the privacy of users;
3. HB 186 usurps parental decision making.

HB 186's core provisions are unconstitutional and are already being litigated in other states

HB 186 raises serious First Amendment concerns by restricting the speech rights of minors and burdening access to lawful speech for adults. The bill's complete prohibition on social media access for those under 18 represents an overly broad restriction on speech that is unlikely to survive constitutional scrutiny.

The bill's restrictions on minors' access to social media platforms raises First Amendment concerns by limiting their ability to access information and engage in protected speech. Courts have consistently recognized that minors have constitutional rights to receive information and ideas through various media. Further, the bill's requirements would effectively create a barrier to constitutionally protected speech for users *of all ages*, as platforms would be required to verify age before allowing access to any content.

The Supreme Court has invalidated such restrictions when they impermissibly chill access to lawful speech.¹ In *Brown v. Entertainment Merchants Association*, the Court struck down a California law restricting minors' access to violent video games without parental consent. The Court rejected the notion that a new category of unprotected speech could be created for speech directed at children, emphasizing that minors are entitled to significant First Amendment protection. Justice Scalia's majority opinion noted that the government cannot "restrict the ideas to which children may be exposed" simply because it disagrees with them.

Several state laws aimed at requiring age verification for online access are being challenged in federal courts on constitutional grounds. Last month, federal judges permanently enjoined laws in Arkansas and Ohio² requiring social media platforms to conduct age verification. In the ruling against the State of Arkansas, Judge Timothy Brooks wrote the following:

“Age-verification requirements are also more restrictive than policies enabling or encouraging users (or their parents) to control their own access to information, whether through user-installed devices and filters or affirmative requests to third-party companies. ‘Filters impose selective restrictions on speech at the receiving end, not universal restrictions at the source.’ *Ashcroft v. ACLU*, 542 U.S. 656, 657 (2004). And ‘[u]nder a filtering regime, adults . . . may gain access to speech they have a right to see without having to identify themselves[.]’ *Id.* Similarly, the State could always ‘act to encourage the use of filters . . . by parents’ to protect minors. *Id.*; see also *Playboy Ent. Grp.*, 529 U.S. at 809–10, 815 (finding that voluntary, ‘targeted blocking’ of certain content by viewers ‘is less restrictive than banning’ the same content).”³

Federal judges have also blocked similar laws in Texas already⁴ and multiple other states - including California,⁵ Mississippi,⁶ and Utah⁷ - pending full legal review of the challenges. A similar legal challenge to HB 186 would bring confusion and significant cost to Texas taxpayers and is best avoided.

¹ *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786 (2011).

² *NetChoice, LLC v. Yost* (S.D. Ohio 2024)

³ *NetChoice, LLC v. Griffin* (W.D. Ark. 2023)

⁴ *Computer & Communications Industry Association v. Paxton* (W.D. Tex. 2024)

⁵ *NetChoice v. Bonta* (N.D. Cal. 2024)

⁶ *NetChoice, LLC v. Fitch* (S.D. Miss. 2024)

⁷ *NetChoice, LLC v. Reyes* (D. Utah 2024)

Age-verification presents heightened threats to privacy and undermines the state's interest in protecting the privacy of users

While we share the legislature's goal of protecting young people online, HB 186's approach would create significant privacy and security concerns. The bill requires every internet user—regardless of age—to submit unspecified “transactional data” to prove their age in order to access social media. While the bill attempts to alleviate the glaring privacy concerns with this provision by mandating such data is immediately deleted, the bill does not speak to how social media companies can prove compliance should an allegation of a violation arise.

In effect, HB 186 incentivizes social media companies to collect multiple forms of personally-identifiable information about users. Platforms may utilize and delete one piece of “transactional data” for age verification, while collecting and retaining other personal data for purposes of legal defense. This means websites would need to collect and store sensitive information, creating massive databases that will inevitably become targets for hackers. This runs counter to best practices of data minimization and could make Texas residents more susceptible to identity theft and fraud.

As we have seen, no number of safeguards can ensure against data breaches. According to Child Identity Fraud Reports from Javelin Strategy and Research, nearly 2 million children were victims of identity theft in 2022.⁸ Meanwhile, the 2019 hack of Pearson (a school technology provider) exposed information of thousands of children, including their names, birthdates, and email addresses.⁹ Even government agencies responsible for storing personal information have been subject to massive data leaks.¹⁰ Mandating or *de facto* mandating that websites or services collect sensitive personal data users of all ages as a precondition for accessing vast swaths of online speech substantially increases these risks.

Accordingly, state legislatures should evaluate whether their proposed policies would advance privacy protections or simply subject minors and adults to greater vulnerability in their online lives.

HB 186 usurps parental decision making

Poorly designed age verification and speech access laws not only face legal challenges, but also encroach upon parents' long-established prerogatives in guiding their children's upbringing and online activities. Many online platforms have implemented robust parental control features. For example, some online platforms have led the way with impressive suites of tools for parents and teens to better protect themselves. Additional parental controls are available at the device level. For example, iPhones and iPads empower parents to limit the amount of time their children can spend on the device, choose which applications (e.g., YouTube, Facebook, Snapchat, or Instagram) their children can use, set age-related

⁸ Javelin, *1.7 Million U.S. Children Fell Victim to Data Breaches According to Javelin's 2022 Child Identity Fraud Study*, (Oct. 26, 2022) (last visited Mar. 22, 2024),

⁹ Lindsay McKenzie, *Pearson Hack Exposes Thousands of Students' Data*, INSIDE HIGHER ED (Aug. 4, 2019), <https://www.insidehighered.com/quicktakes/2019/08/05/pearson-hack-exposes-thousands-students%E2%80%99-data>.

¹⁰ Sean Lyngaas, *Millions of Americans' personal data exposed in global hack*, CNN POLITICS, June 16, 2023, <https://www.cnn.com/2023/06/16/politics/cyberattack-us-government/index.html>.

content restrictions for those applications, filter online content, and control privacy settings. This market-driven approach encourages innovation and allows for diverse solutions that can cater to different needs and preferences.

In reality, every family has different needs. Some parents may allow their child to use YouTube Kids for educational videos, and others may choose to let their teen join a moderated online community to discuss their hobbies or interests. These are choices that parents and guardians should have the right to make depending on their own child's needs—rather than the government mandating how families in Texas use the internet.

Given the constitutional problems presented by a total ban of minors and age-verification for all users, NetChoice urges you to oppose HB 186. Instead, we respectfully ask you to work with industry stakeholders to develop more effective approaches to protecting young people online while preserving all users' privacy and youth access to beneficial digital services. These approaches can and should include greater resources for law enforcement to go after bad actors online directly, as well as resources for schools and local governments to educate students and parents about existing online safety tools and best practices. As always, we offer ourselves as a resource to discuss any of these issues with you in more detail.

Sincerely,

Bartlett Cleland
General Counsel

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