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NetChoice
Defending Free Speech and Free Enterprise Online

New Hampshire HB 1650, The Age-Appropriate Design Code Act

TESTIMONY IN OPPOSITION

January 29, 2026

New Hampshire House of Representatives
Commerce and Consumer Affairs Committee
New Hampshire State House
107 North Main Street
Concord, New Hampshire, 03301

Dear Chairman Hunt, Vice Chairman Potucek, and Members of the Commerce and Consumer Affairs Committee:

NetChoice respectfully urges you to **oppose HB 1650, the Age-Appropriate Design Code Act**, legislation that would restrict access to protected speech and create a requirement of age verification for social media platforms while implementing what is called an Age Appropriate Design Code—more accurately described as a "Speech Code."[1]

This bill would mandate that online platforms censor lawful and constitutionally protected expression on behalf of the state, in direct violation of the Constitution. Similar legislation has already failed when challenged in federal courts. HB 1650 will undermine privacy and cybersecurity protections for young people, invite immediate and costly legal challenges, and likely never go into effect.

HB 1650 suffers from significant constitutional flaws, including:

> 1. HB 1650's core provisions are unconstitutional under the First Amendment—and already being actively litigated in other states; and
> 2. HB 1650 would put New Hampshire residents' privacy and data at risk, leaving them vulnerable to breaches and crime.

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.

[1] NetChoice v. Bonta (2022), Third Time Still Not a Charm: Court Rules Against California Online Speech Code Again in NetChoice v. Bonta - NetChoice

We share the sponsor's goal to better protect minors from harmful content online, but an unconstitutional law helps no one. 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 1650 and instead use this bill to jumpstart a larger conversation about how best to protect minors online by constitutionally sound legislation.

HB 1650's core provisions are unconstitutional under the First Amendment—and are already being actively litigated in other states.

HB 1650 contains several constitutional defects. Chief among these defects is the requirement that social media companies perform age-verification for every user of its services. Laws containing similar defects as those in HB 1650 have already been challenged in federal court. Laws from Arkansas,[2] California,[3] and Ohio[4] are currently enjoined.

The internet has made information, discourse, and speech "as diverse as human thought" readily accessible.[5] And the First Amendment prohibits the government from restricting the ability to access, receive, or engage in online speech.[6] Indeed, the First Amendment's protections are enjoyed by minors and adults alike.[7] When challenged, the Supreme Court has consistently reaffirmed this bedrock First Amendment principle.[8]

The fact that HB 1650 covers the internet rather than books, television programs, or video games, does not change the First Amendment issue.[9] Social media websites provide access to speech on topics ranging from religious worship and political dialogue to sharing recipes and offering well-wishes. And the Supreme Court has made clear that the government lacks the "free-floating power to restrict the ideas to which children may be exposed."[10]

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[2] *NetChoice v. Griffin*, 2023 WL 5660155 (W.D. Ark., Aug. 31, 2023) (enjoining Arkansas's parental consent and age-verification law to access social media for violation of the First Amendment).
[3] *NetChoice v. Bonta*, 2023 WL 6135551 (N.D. Cal., Sep. 18, 2023) (enjoining California's Age-Appropriate Design Code Act for violation of the First Amendment).
[4] *NetChoice v. Yost*, 2024 U.S. Dist. LEXIS 24129 (S.D. Ohio, Feb. 12, 2024) (enjoining Ohio's parental consent for social media law as unconstitutional under the First Amendment).
[5] *Packingham v. North Carolina*, 582 U.S. 98, 105 (2017).
[6] *See Bd. of Educ. v. Pico*, 4557 U.S. 853, 867 (1982).
[7] *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) (holding that minors enjoy First Amendment rights).
[8] *See e.g., Mahanoy Area Sch. Dist. v. B.L.*, 141 S.Ct. 2038 (2021).
[9] *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 856 (1997) (holding that the First Amendment applies to the internet).
[10] *Brown v. Entertainment Merchants Association*, 564 U.S. 786, 794 (2011).

If passed, HB 1650 would violate minors' First Amendment rights by depriving anyone who refuses to comply with its age-verification requirements of access to the veritable panoply of protected speech available on social media sites. By prohibiting access to speech, the First Amendment applies.[11]

Online Speech Codes are already losing in court.

HB 1650 resembles California's unconstitutional Speech Code (and an import from the United Kingdom) which would impose sweeping restrictions on online speech through an unconstitutional regulatory regime masquerading as a data privacy law. California's Speech Code was fully enjoined by a federal judge. The judge prevented the bill from going into effect because NetChoice, as the plaintiff, will "likely succeed…under the First Amendment."[12] Like similar laws recently enjoined nationwide, HB 1650 violates bedrock First Amendment principles through content-based restrictions that trigger and fail strict scrutiny. In oral arguments, the federal judge stated: "nothing shown to me shows that the [state] Legislature cared one whit about the Constitution. [California's AADC] was not designed to pass successfully through the filter of the First Amendment, and now [the State] is trying to reverse engineer it."

New Hampshire's proposed Speech Code is similarly likely to run afoul of the First Amendment due to its strong inducement for online platforms to over-censor content in order to avoid being penalized under the law's vague concept of what might be harmful to minors. Under threat of virtually endless civil litigation for misjudging what combination of content and features may be considered to cause "emotional distress" to children, many platforms will certainly default to taking down all content on entire subjects, which is likely to remove beneficial, constitutionally protected material along with anything genuinely harmful. Make no mistake, we are talking about the government banning speech online. That is why the New York Times filed as *amicus curiae* supporting NetChoice in our lawsuit against California's version of the Age Appropriate Design Code.

Age-Verification requires massive collection of sensitive personal information.

While we share the legislature's goal of protecting young people online, HB 1650 approach would create significant privacy and security concerns. The bill requires platforms to conduct age assurance on all existing and prospective users. Data collected in the process of age assurance could be stored indefinitely despite the bill's language regarding data segregation and deletion. As we have seen before, promises to delete personal data are not always kept. The Tea App, for example, had a policy promising to delete authentication data after user verification, but instead kept the data, unencrypted, leading to a

[11] *NetChoice v. Yost*, 2024 U.S. Dist. LEXIS 24129, *17 (S.D. Ohio, Feb. 12, 2024) (There is no "contract exception" to the First Amendment.").
[12] *NetChoice v. Bonta*, 2023 WL 6135551 (N.D. Cal., Sep. 18, 2023) (enjoining California's Age-Appropriate Design Code Act for violation of the First Amendment)

massive breach of personal information, including 72,000 drivers licenses and other images uploaded by users.[13]

Further, HB 1650 may potentially require "interoperable age assurance methods" leading to a scenario where sensitive user data is accessible to multiple age assurance providers with varying degrees of cybersecurity. Such mandated interoperability inherently creates access points for bad actors as well.

The legislation also instructs social media companies to "[i]mplement a review process to allow users to appeal their age determination." This process would require platforms to collect multiple forms of personally-identifiable information about users, kept for an indeterminate period of time, creating massive databases that will inevitably become targets for hackers. This runs counter to best practices of data minimization and could make New Hampshire residents more susceptible to identity theft and fraud.

Age verification technology remains unproven and insufficiently secure. There are countless examples of high-profile hacks of concentrated collections of sensitive data, from the federal Office of Personnel Management[14] to health insurance exchanges created by the Affordable Care Act.[15] Concentrating sensitive data creates a bullseye for bad actors. Age verification systems create such a target, demonstrated by the recent hack of an age verification system used in Australia to verify and store the information of adults accessing physical locations with age restrictions, such as bars.[16]

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.

An Approach that Actually Works

Rather than enact clearly unconstitutional laws banning the free speech of New Hampshire residents, the state would be better served enacting laws that help the citizens and are legal. NetChoice is working with lawmakers from across the country to achieve such ends.

Requiring Digital Education in Schools

Empowering students with digital literacy skills and knowledge about online safety through curriculum developed by education experts represents a constitutional and effective approach. Curriculum requirements should effectively address crucial issues facing young people online, including mental

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[13] Mary Bennett, Rob Robinson, "Tea Dating App Breach Reveals Major Data Privacy Gaps in Rapidly Growing Platforms," JDSupra, August 8, 2025. https://www.jdsupra.com/legalnews/tea-dating-app-breach-reveals-major-1269005/

[14] Sciutto, Jim, "OPM government data breach impacted 21.5 million," CNN, July 10, 2015, https://www.cnn.com/2015/07/09/politics/office-of-personnel-management-data-breach-20-million/index.html

[15] Mandler, C., "Following a 'significant' breach, DC Health Link user data is being sold on the dark web," CBS News, March 8, 2023, https://www.cbsnews.com/news/data-breach-washington-dc-health-link-user-data-sold-dark-web-congress/

[16] Kidd, Jessica, "Cybercrime detectives arrest man following alleged data breach involving more than 1 million NSW clubs customer records," ABC News, May 1, 2024, https://www.abc.net.au/news/2024-05-02/clubs-nsw-cybersecurity-potential-data-breach-venues/103793584

health impacts, content manipulation, digital permanence, and identifying dangerous behaviors like cyberbullying, predatory conduct, and human trafficking. This approach will not only reach children where they are, but will help arm them to become better digital citizens.

Updating Child Abuse Laws for AI

Today, child abusers are able to use artificial intelligence to create images and escape justice under exiting Child Sexual Abuse Material (CSAM) laws. This is because existing CSAM laws require real images of the abuse, rather than AI generated ones. NetChoice is working with lawmakers to create laws that fill the gaps in existing CSAM laws to protect children from such abuses.

Empowering law enforcement to arrest child abusers

Today less than 1% of all reports of child abuse are even investigated. That means that 99% of reports of child abuse go unheard. This is because law enforcement doesn't have the resources it needs to investigate and prosecute child abusers. NetChoice supports giving law enforcement the resources it needs to put child abusers behind bars.

Again, we respectfully **ask you to oppose HB 1650.** We welcome the opportunity to work with the committee to strengthen these educational components while addressing the constitutional and privacy concerns in other sections of the bill. 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.[17]

Sincerely,

Patrick Hedger
Director of Policy
NetChoice
NetChoice is a trade association that works to protect free expression and promote free enterprise online.

[17] The views of NetChoice expressed here do not necessarily represent the views of NetChoice members.