Amy Bos
Vice President of Government Affairs, NetChoice
Washington, DC 20005

NetChoice
Defending Free Speech and Free Enterprise Online

Wyoming HB0102

LETTER OF OPPOSITION

February 26, 2026

Dear Members of the Joint Judiciary Committee:

NetChoice, a trade association of leading internet companies committed to free expression and free enterprise online, respectfully submits this letter in opposition to House Bill 0102. While we share the Legislature's commitment to protecting children from exploitation and holding bad actors accountable, HB0102 as currently drafted contains provisions that are constitutionally infirm, legally overbroad, and will expose legitimate technology developers and platforms to unpredictable liability. We urge the Legislature to address these serious concerns before advancing this bill.

NetChoice supports the bill's core goals. Criminalizing the distribution of nonconsensual synthetic sexual material, prohibiting AI-generated child pornography, and targeting AI systems designed to promote self-harm are legitimate and important policy objectives. However, several provisions in this bill would undermine those goals through poor drafting, create serious constitutional problems, and harm the broader technology ecosystem in Wyoming.

The Should Have Known Standard Undermines Developer Immunity and Must Be Replaced with an Actual Knowledge Standard

Section 1-1-143 provides immunity to AI developers when third parties misuse their systems for illegal purposes — a sound and necessary protection. However, that immunity is critically undermined by subsection (c)(ii), which strips immunity when the developer "should have known" the primary use of the system would be for illegal purposes.

This standard is constitutionally and legally problematic for several reasons:

- Impermissibly vague for criminal liability. The "should have known" standard invites hindsight bias and provides no objective benchmark. AI developers cannot know in advance what a court will later determine they "should have" foreseen about novel misuse of emerging technologies.
- Strict liability by another name. In practice, this standard becomes an expectation that developers predict every conceivable misuse by bad actors, effectively converting the immunity provision into strict liability for third-party criminal acts.

- No policy gap to fill. Subsection (c)(i) already captures developers who knowingly create tools for illegal purposes. There is no legitimate policy need for the additional constructive knowledge standard.
- Chills innovation. Forcing developers to anticipate every creative misuse by bad actors imposes an impossible burden and will deter AI development and investment in Wyoming.

NetChoice urges the Legislature to amend §1-1-143(c)(ii) to require actual knowledge, consistent with longstanding criminal law norms and subsection (c)(i).

Section 6-4-307 Needs a Clearer Intent Standard and a Platform Carve-Out

The nonconsensual synthetic sexual material offense again relies on a "knows or should have known" standard. Because the term "distribution" is broad and undefined, this language could sweep in platforms, cloud providers, and other intermediaries with no actual awareness of specific content. Criminal statutes targeting harmful content should require "knowingly and intentionally" conduct to ensure only genuine bad actors face liability, not passive conduits. Additionally, Wyoming's existing intimate images statute (§6-4-306) already includes a carve-out protecting interactive computer services — yet that same protection is inexplicably absent from §6-4-307, creating an unexplained gap for providers handling materially similar content. Both fixes are straightforward and would strengthen the bill without limiting its reach against actual offenders.

The Political Speech Censorship Provision Is Unconstitutional

Article 8, which prohibits platforms from using AI to moderate "political speech," directly conflicts with binding Supreme Court precedent and should be struck from the bill. In *Moody v. NetChoice* (2024)[1], the Supreme Court held that Texas and Florida laws containing nearly identical prohibitions on viewpoint-based content moderation violated the First Amendment. The Court was explicit: deciding what third-party content to include or exclude from a platform is protected expressive activity. Justice Barrett's concurrence went further, specifically holding that platforms' use of algorithms that implement human editorial judgments to identify and remove content is protected editorial discretion. By prohibiting the use of artificial intelligence to moderate political content, Wyoming's Article 8 replicates the same constitutional defects the Court already rejected. The provision's undefined term "political speech," its $10,000 per-violation penalty structure, and its enumerated exceptions do not cure the fundamental problem. Texas and Florida spent years and significant taxpayer resources litigating these laws to the Supreme Court and lost. Wyoming should not repeat that experience.

Conclusion

[1] Moody v. NetChoice, LLC, 603 U.S. 707 (2024)

NetChoice urges the Senate to make three targeted amendments before advancing HB0102. The “should have known” standard in §1-1-143(c)(ii) should be replaced with actual knowledge — bad actors are already captured by subsection (c)(i), and a constructive knowledge standard serves only to punish good-faith developers. Section 6-4-307 should require “knowingly and intentionally” conduct and include the same platform carve-out already present in §6-4-306. And §40-12-801 should be struck in its entirety — it is unconstitutional under Moody v. NetChoice and cannot be fixed by amendment.
These changes would preserve everything the bill does well while eliminating provisions that are legally untenable. NetChoice welcomes the opportunity to work with you and the bill’s sponsors toward solutions that will hold up in court.

Respectfully submitted,

Amy Bos
Vice President Government Affairs, NetChoice
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[2] The views of NetChoice expressed here do not necessarily represent the views of all NetChoice members.