

Rhode Island H 7632, Age-Appropriate Design Code

TESTIMONY IN OPPOSITION

April 8, 2026

Rhode Island Legislature Members of the House Committee on Innovation, Internet & Technology Committee

Dear Chair Baginski, Vice-Chair Handy, and Member of the Committee,

NetChoice respectfully requests your opposition to H 7632, legislation that would restrict access to protected speech and require age verification for social media platforms while implementing what is called an Age Appropriate Design Code—more accurately described as a "Speech Code."

H 7632 is modeled closely on California's Age-Appropriate Design Code — a law that has spent the better part of three years mired in federal court. NetChoice urges this Committee to learn from California's experience rather than repeat it.

As introduced, H 7632 suffers from significant constitutional flaws:

1. H 7632's core provisions are unconstitutional under the First Amendment—and already being actively litigated in other states; and
2. H 7632 would put Rhode Island residents' privacy and data at risk, leaving them vulnerable to breaches and crime.

NetChoice is a trade association of leading internet businesses whose mission is to make the internet safe for free enterprise and free expression. Our members have invested significantly in parental controls, privacy-protective defaults, and minor-specific safety features. And while we share the sponsors' sincere concern for children's safety online — a law that cannot survive constitutional scrutiny does not protect children. It burdens Rhode Island taxpayers with expensive litigation, creates years of legal uncertainty, and ultimately delivers nothing to the families it claims to help.

H 7632 Is Unconstitutional Under the First Amendment and Is Already Losing in Court

The central legal defect of H 7632 is straightforward: it is a speech regulation masquerading as a data privacy law. The California Age-Appropriate Design Code, upon which H 7632 is modeled, was enjoined by a federal district court on First Amendment grounds. The court found that NetChoice — as the

plaintiff — would "likely succeed" on the merits of its First Amendment challenge.¹ The presiding judge observed that the California legislature appeared not to have given the Constitution any serious consideration during drafting, noting that the law "was not designed to pass successfully through the filter of the First Amendment." Rhode Island should not repeat California's mistake.

Similar laws from Arkansas², Ohio³, and South Carolina⁴ have likewise been enjoined or are currently subject to active legal challenge. The pattern is consistent and unmistakable: laws structured like H 7632 do not survive First Amendment scrutiny. The internet has made information and discourse "as diverse as human thought, and the First Amendment prohibits the government from restricting access to that speech — for adults and minors alike.⁵ The Supreme Court has been unequivocal: the government lacks a "free-floating power to restrict the ideas to which children may be exposed."⁶ If passed, H 7632 would likely be challenged in federal court, and Rhode Island taxpayers would bear the cost of defending an indefensible law.

Vague Harm Standards Will Drive Sweeping Censorship of Lawful, Protected Speech

H 7632's core obligation — that covered entities use "reasonable care to avoid any heightened risk of harm to children" — sounds measured in the abstract. But the definition of "heightened risk of harm" in Section 6-48.2-3 tells a very different story. That definition encompasses any "reasonably foreseeable risk" of:

- "Financial or reputational injury" to a child;
- Any intrusion upon a child's "solitude or seclusion" that "would be highly offensive to a reasonable person"; or
- "Unfair or deceptive treatment" of children.

None of these terms are defined with legal precision. They are open-ended judgments about the effect of content and platform design on minors — judgments that no platform can make with legal confidence. The bill then pairs this vagueness with civil penalties of up to **\$7,500 per affected child per intentional violation**.

No platform will attempt to carefully distinguish between content that creates a "reasonably foreseeable" reputational risk to a minor and content that does not. Faced with existential per-child liability under standards this indefinite, platforms will do what rational actors always do: they will over-remove. Entire categories of lawful speech — commentary on mental health, discussions of social conflict, political content that might offend, news coverage of difficult events, religious perspectives, advice about navigating difficult personal circumstances — will be swept away not because they are

¹ *NetChoice, LLC v. Bonta*, No. 5:22-cv-08861-BLF (N.D. Cal. Sept. 18, 2023)

² *NetChoice, LLC v. Griffin*, No. 5:23-cv-05105 (W.D. Ark. Aug. 31, 2023)

³ *NetChoice, LLC v. Yost*, No. 2:24-cv-00047 (S.D. Ohio Feb. 12, 2024)

⁴ *NetChoice, LLC v. Wilson*, D.S.C. (preliminary injunction; active litigation)

⁵ *Reno v. ACLU*, 521 U.S. 844, 870 (1997)

⁶ *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786, 794 (2011)

harmful, but because no compliance team can guarantee they are safe under standards this vague. This is censorship of constitutionally protected speech, achieved not through direct prohibition, but through the threat of ruinous financial penalties.

The First Amendment does not permit the government to achieve through liability exposure what it cannot achieve through direct prohibition. Laws that predictably produce the suppression of protected speech through regulatory vagueness are constitutionally defective regardless of whether any specific piece of content is explicitly targeted. The New York Times filed as amicus curiae supporting NetChoice in our lawsuit against California's version of this law — a reminder that this issue cuts across ideological lines and affects the full range of constitutionally protected expression. H 7632 is such a law, and it will face the same legal consequences.

The Bill's "Known Children" Framework Compels Unconstitutional Age Verification

While H 7632 does not mandate age verification by its explicit terms, its practical operation compels platforms to build exactly the kind of age-identification infrastructure that the Supreme Court has repeatedly struck down. The bill's obligations — applying child-protective defaults, limiting data processing, and configuring privacy settings — apply specifically to "known children." A covered entity can only fulfill those duties if it actually knows which of its users are children.

Any such system necessarily requires the collection of sensitive personal, identity, or biometric information from every user — adult and minor alike — as a condition of accessing the platform. This imposes a severe and universal privacy cost on Rhode Island residents simply to access constitutionally protected speech. The Supreme Court has struck down online age-verification schemes precisely because they force users to forgo the anonymity otherwise available on the internet as the price of accessing lawful content. That anonymity is not a technicality. The framers of the Constitution understood anonymous speech as foundational to political engagement — and the Supreme Court has affirmed that the First Amendment's protection of anonymous speech applies with full force online.

Federal courts have invalidated laws that created the same structural incentives toward age verification that H 7632 creates here. Rhode Island should not add itself to that list. The practical compulsion toward age verification is constitutionally indistinguishable from a direct mandate — and H 7632 will face the same fate as the laws that have preceded it.

Conclusion

NetChoice does not ask this Committee to do nothing. We ask it to act constitutionally. Rather than enact a law that will be enjoined before it ever reaches a child, Rhode Island would be better served by:

- **Requiring digital literacy education in schools.** Empowering students with knowledge about online safety, mental health impacts, digital permanence, cyberbullying, predatory conduct, and human trafficking is constitutional, effective, and durable.
- **Updating child abuse laws for AI-generated content.** Existing CSAM laws require real images of abuse. Closing that gap to cover AI-generated material directly protects children without any First Amendment complications.

- **Empowering law enforcement.** Fewer than 1% of all reports of child abuse are investigated today. Resourcing law enforcement to investigate and prosecute child abusers will deliver real protection to real children.

Again, we respectfully **ask you to oppose H 7632** and instead pursue the constitutional alternatives that will actually deliver safety and protection to Rhode Island's families. 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,

Amy Bos
Vice President of Government Affairs, NetChoice

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.