

Rhode Island SB 2406, Age-Appropriate Design Code

TESTIMONY IN OPPOSITION

March 3, 2026

Rhode Island Legislature Members of the Senate Judiciary Committee:

NetChoice respectfully requests your opposition to SB 2406, 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."¹

SB 2406 would mandate that online platforms redesign their products and censor lawful, constitutionally protected expression on behalf of the State of Rhode Island. It violates the First Amendment, has already failed when near-identical legislation was challenged in court, and will expose Rhode Island taxpayers to costly and likely unsuccessful litigation. The bill will almost certainly never go into effect as written.

As introduced, SB 2406 suffers from significant constitutional flaws:

1. SB 2406's core provisions are unconstitutional under the First Amendment—and already being actively litigated in other states; and
2. SB 2406 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 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.

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 SB 2406 and instead use this bill to jumpstart a larger conversation about how best to protect minors online by constitutionally sound legislation.

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

SB 2406's Core Provisions Are Unconstitutional Under the First Amendment

SB 2406 contains several constitutional defects. Chief among these defects is that SB 2406 effectively requires that social media companies perform age-verification for every user of its services. Laws containing similar defects as those in SB 2406 have already been challenged in federal court. Laws from Arkansas,² California,³ and Ohio⁴ are currently enjoined. Similarly, South Carolina's age appropriate design code is currently subject to legal challenge.⁵

The internet has made information, discourse, and speech "as diverse as human thought" readily accessible.⁶ And the First Amendment prohibits the government from restricting the ability to access, receive, or engage in online speech.⁷ Indeed, the First Amendment's protections are enjoyed by minors and adults alike.⁸ When challenged, the Supreme Court has consistently reaffirmed this bedrock First Amendment principle.⁹

The fact that SB 2406 covers the internet rather than books, television programs, or video games, does not change the First Amendment issue.¹⁰ 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."¹¹

If passed, SB 2406 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.¹²

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 *NetChoice v. Wilson*, 2026

⁶ *Packingham v. North Carolina*, 582 U.S. 98, 105 (2017).

⁷ See *Bd. of Educ. v. Pico*, 457 U.S. 853, 867 (1982).

⁸ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) (holding that minors enjoy First Amendment rights).

⁹ See e.g., *Mahanoy Area Sch. Dist. v. B.L.*, 141 S.Ct. 2038 (2021).

¹⁰ *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 856 (1997) (holding that the First Amendment applies to the internet).

¹¹ *Brown v. Entertainment Merchants Association*, 564 U.S. 786, 794 (2011).

¹² *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.)

Online Speech Codes are already losing in court

SB 2406 largely mirrors 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." Like similar laws recently enjoined nationwide, SB 2406 violates bedrock First Amendment principles through content-based restrictions that trigger and fail strict scrutiny. In recent 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."

Rhode Island's 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. SB 2406 prohibits covered entities from processing children's data in any way that presents a "reasonably foreseeable risk" of, among other things, "financial or reputational injury," an "intrusion upon the solitude or seclusion" that would be "highly offensive to a reasonable person," or "unfair or deceptive treatment." These standards are extraordinarily vague and subjective, and carry penalties of up to \$7,500 per affected child per intentional violation. Under threat of massive fines for misjudging what may be considered psychologically or emotionally harmful 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

The Supreme Court has struck down online age-verification schemes because they infringe on access to broad swaths of speech and chill both potential speakers and willing listeners from entering the marketplace of ideas.¹³ Similarly, the Supreme Court has also invalidated parental consent requirements because they impermissibly chill access to lawful speech.¹⁴

Parents, not governments, determine what languages their children learn,¹⁵ what school to attend,¹⁶ their religious upbringing,¹⁷ and so forth. Parents are responsible not only for these high-level decisions, but also the granular ones down to what vegetable their child should have with dinner. But SB 2406 flips the script and puts the government in the driver's seat.

¹³ See *Reno v. ACLU*, 521 U.S. 844, 855-857 (1997); *Ashcroft v. ACLU*, 542 U.S. 656 (2004).

¹⁴ *Pico* at 867.

¹⁵ *Meyer v. Nebraska*, 262 U.S. 390 (1923).

¹⁶ *Pierce v. Society of Sisters*, 269 U.S. 510 (1925).

¹⁷ *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

In fact, in certain respects, SB 2406 resembles California’s unconstitutional parental consent law for video games. The Supreme Court struck down California’s law over a decade ago.

California restricted the sale of violent video games to minors and required parental consent before a minor could make the purchase. The Court struck down the law because it did not enforce parental authority. Instead, the law imposed *governmental authority* subject only to a parental veto.¹⁸ Writing for the majority, Justice Scalia explained that because violence or violent content is protected expression under the First Amendment, the State could not restrict minors from accessing it.¹⁹

Indeed, SB 2406 is *more* troubling than the California scheme because its scope is not limited merely to “violent” content but applies to “social media companies” which offer a range of content including religious services, educational videos, advice on navigating mental health struggles and more.

Federal courts have already had occasion to pass on three different attempts to restrict access to the internet (and social media companies specifically) through age-verification and parental consent requirements. In every case, the court struck down the law as unconstitutional under the First Amendment.

Age-verification cuts to the heart of another core First Amendment protection: anonymity. The framers understood this point and valued anonymity as a tool for political engagement. It is not an exaggeration to say that we owe the existence of our constitutional system to anonymous speech.²⁰ The Supreme Court has explicitly affirmed that the First Amendment covers the right to speak anonymously²¹ and has repeatedly struck down age-verification schemes finding that they would force users to “forgo the anonymity otherwise available on the internet.”²² SB 2406 would, therefore, face the same fate as the Arkansas law.

An Approach that Actually Works

Rather than enact clearly unconstitutional laws banning the free speech of Rhode Island 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

We strongly support the bill’s education provisions. Empowering students with digital literacy skills and knowledge about online safety through curriculum developed by education experts represents a

¹⁸ *Brown* at 795, fn. 3.

¹⁹ *Id.* at 802 quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 212-213 (1975) (explaining that the First Amendment does not permit the government to penalize third parties from disseminating speech just in case the parents disapprove of the speech).

²⁰ See ALEXANDER HAMILTON, JAMES MADISON & JOHN JAY, *THE FEDERALIST PAPERS* (Clinton Rossiter, 2003); *THE ANTI-FEDERALIST PAPERS* (Ralph Louis Ketcham, 2003). The essays supporting and opposing ratification of the Constitution in these papers were published pseudonymously.

²¹ *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 357 (1995) (internal citations omitted).

²² *Griffin* at *51 quoting *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 99 (2d Cir. 2003).

constitutional and effective approach. The curriculum requirements effectively address crucial issues facing young people online, including mental health impacts, content manipulation, digital permanence, and identifying dangerous behaviors like cyberbullying, predatory conduct, and human trafficking. The reporting mechanisms ensure students know how to get help when needed. 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 existing 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 SB 2406**. 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.²³

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.

²³ The views of NetChoice expressed here do not necessarily represent the views of NetChoice members.