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Office of Governor Ron DeSantis
State of Florida
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Letter in **OPPOSITION** to House Bill 1: “An act relating to online protections for minors”

February 27, 2024

Dear Governor DeSantis,

My name is Josh Withrow, and I am a fellow with the Technology and Innovation Policy team at the R Street Institute (“R Street”), which is a nonprofit, nonpartisan, public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, including the technology and innovation sector.

We write to urge you to veto HB 1. Our primary concerns about the bill are threefold: It empowers the state to make decisions that ought to be the domain of parents; it violates the First Amendment by unduly burdening access to speech; and it creates major new privacy and cybersecurity concerns.

Parental Choice

First and foremost, HB 1 represents a state intrusion into decisions about minors’ access to speech that ought to be the sole domain of parents. HB 1 flatly prohibits minors under the age of 16 from being allowed to establish an account on covered social media platforms and even requires the deletion of existing accounts known or suspected to belong to users under the age of 16.¹ The bill ignores that only parents are uniquely situated to judge how mature their kids are and at what age they are responsible enough to engage with social media, with all its potential risks and benefits.

¹ HB 1, “An act relating to online protections for minors,” Florida Legislature, <https://www.flsenate.gov/Session/Bill/2024/1/?Tab=BillText>.



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And while the bill’s supporters portray a world in which parents have little to no control over their children’s access to and usage of social media, the truth is that parental tools to regulate kids’ activity online are easily accessible at little or no cost.²

Constitutional Problems With Age Verification

Enforcing a ban on social media for minors inevitably requires age verification, which comes with a host of practical and constitutional challenges.³ The age-gating mandate in HB 1 would force every user of a covered social media platform – adult or minor – to submit to an intrusive age verification process, whether by providing a form of identification or by submitting to some form of biometric verification.

The first constitutional problem this creates is that it inherently threatens anonymity of speech online. Circuit courts have affirmed this danger that age verification mandates pose to anonymous speech, and this same concern was raised in the district court injunction against a similar age verification mandate in Arkansas last year.⁴ As you have affirmed yourself, anonymous speech is a cherished right that both pre-dates and is protected by the First Amendment, and deanonymizing online platforms is not the answer to protecting against online harms.⁵

The second problem is that forcing every social media user to undergo age verification imposes a burden to accessing speech that is far from the least restrictive means of protecting minors from harmful content online. The Supreme Court has previously struck down federal attempts to enact age verification

² See, e.g., “Child online safety tools,” Competitive Enterprise Institute, <https://cei.org/children-online-safety-tools/> and “Parental Controls,” Internet Matters, <https://www.internetmatters.org/parental-controls/>.

³ For a detailed overview of the multitude of problems posed by mandatory age verification, see Shoshana Weissmann, “The Fundamental Problems with Social Media Age Verification Legislation,” *R Street Institute*, May 16, 2023.

<https://www.rstreet.org/commentary/the-fundamental-problems-with-social-media-age-verification-legislation/>

⁴ *NetChoice v. Griffin*, 5:23-CV-05105, quoting *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 99 (2d Cir. 2003) and *ACLU v. Mukasey*, 534 F.3d 181, 197 (3d Cir. 2008).

<https://netchoice.org/wp-content/uploads/2023/08/GRIFFIN-NETCHOICE-GRANTED.pdf>.

⁵ Brady Knox “DeSantis denounces Haley’s call to ban online anonymity as ‘dangerous and unconstitutional,’” *Washington Examiner*, Nov. 15, 2023.

<https://www.washingtonexaminer.com/news/2575139/desantis-denounces-haleys-call-to-ban-online-anonymity-a-s-dangerous-and-unconstitutional/>.



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mandates for this reason, citing the easy availability of private parental safety tools as a less restrictive means of protecting children.⁶

Privacy and Cybersecurity Concerns

Finally, most forms of age verification, as well as with the identification of parents or legal guardians required by parts of the bill, would force social media users to turn over their most sensitive personal data, often far more data than a platform would otherwise collect from its users. Even if this information is required to be destroyed after use, it creates a tempting pool of data for hackers to target as well as a risk for accidental breaches. This kind of law can also create a tension between data minimization mandates and the need to be able to prove compliance with age verification, which can lead to the over-retention of personal data in spite of lawmakers' best precautions.⁷

Conclusion

While the desire to protect against the legitimate potential dangers of social media is understandable, banning minors from social media and imposing age verification on the platforms is not a viable or constitutional solution. Florida is on the right track with its new requirements that social media literacy be included in the school curriculum – education of both minors and parents about online safety is a superior solution to government interference in private household decisions. We hope that you will veto HB 1 and focus on pursuing solutions to online safety that are in accordance with the Constitution and parental choice.

⁶ *Reno v. ACLU*, 521 U.S. 844 (1997), U.S. Supreme Court, June 26, 1997.

<https://supreme.justia.com/cases/federal/us/521/844> and *Ashcroft v. ACLU*, 542 U.S. 656 (2004), U.S. Supreme Court, June 29, 2004. <https://supreme.justia.com/cases/federal/us/542/656>.

⁷ Shoshana Weissmann, "If platforms are required to have your government IDs and face scans, hackers and enemy governments can access them too," *R Street Institute*, May 22, 2023.

<https://www.rstreet.org/commentary/if-platforms-are-required-to-have-your-government-ids-and-face-scans-hackers-and-enemy-governments-can-access-them-too/> and "Age verification legislation discourages data minimization even with legislators don't intend to,

R Street Institute, May 24, 2023.

<https://www.rstreet.org/commentary/age-verification-legislation-discourages-data-minimization-even-when-legislators-dont-intend-that/>



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Thank you for your time,

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