

Minnesota HB 2257

OPPOSITION TESTIMONY

February 20, 2024

Minnesota House House Ways and Means Committee

NetChoice respectfully asks that you **oppose** HB 2257 as it:

- Fails to protect a single citizen from harm
- Requires websites to collect more information from children and adults
- Violates the 1st Amendment of the US Constitution;
- Usurps and undermines the traditional role of Minnesota families.

NetChoice respectfully asks that you **oppose** HF 2257, legislation which would actually require websites to collect more information on Minnesota residents, share that very sensitive information with the government, and violate clear First Amendment protections and Supremacy Clause restrictions of the US Constitution, along with the Minnesota State Constitution.

HF 2257 will **not** protect a single citizen from harm. That is because an unconstitutional law will protect zero children. Rather than head down this path, NetChoice asks that we work together to create real solutions that will not be thrown out in court.

We understand that speech that undermines the electoral process can be dangerous to the trust in institutions. However, such a concern does not allow the government to ignore free speech protections enshrined in the US Constitution and thus HF 2257 should not move forward.

HF 2257's core provisions are unconstitutional under the First Amendment and under the Minnesota State Constitution.

The First Amendment prohibits the government from restricting an individual's ability to access lawful speech, engage in discourse, express opinions, and more. Indeed, the right of free speech is enjoyed by minors and adults alike.¹ When challenged, the Court has consistently reaffirmed this bedrock First Amendment principle.²

Violates the First Amendment

This protection likewise extends to the arena of elections – and the US Supreme court has expressly recognized the right of anonymous distribution of literature about elections and campaigns. In *McIntyre v. Ohio Elections Commission*,³ for example, a 7-2 decision by the US Supreme Court recognized that a state law denying anonymous speech surrounding elections was violative of the First and Fourteenth Amendments.

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The framers understood this point and valued anonymity. It is not an exaggeration to say that we owe the existence of our constitutional system to anonymous speech.⁴ The Supreme Court has explicitly affirmed that the First Amendment covers the right to speak anonymously⁵ and has repeatedly struck down age-verification schemes⁶ finding that they would force users to “forgo the anonymity otherwise available on the internet.”⁷

As HF 2257 mandates disclosure to the government, the names, and other sensitive information about a post, it is clear that HF 2257 violates the US Constitutional rights of anonymous speech in elections.

¹ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) (holding that minors enjoy First Amendment rights).

² See e.g., *Mahanoy Area Sch. Dist. v. B.L.*, 141 S.Ct. 2038 (2021).

³ *McIntyre v. Ohio Elections Commission*, 514 U.S. 334(1995).

⁴ 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.

⁵ *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 357 (1995) (internal citations omitted).

⁶ E.g. *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 662, 667 (2004); *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 856 (1997); see also *NetChoice v. Griffin*, 2023 WL 5660155, at *17.

⁷ *Id.* quoting *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 99 (2d Cir. 2003).

The courts have recognized the First Amendment rights of individuals, businesses, politicians, and nonprofits to engage in advertisements. However, HF 2257 would forbid those rights by default on selected websites.

Violates the Minnesota State Constitution

“The liberty of the press shall forever remain inviolate, **and all persons may freely speak, write and publish their sentiments on all subjects.**”⁸ This right extends the right to speak without fear of repression from the state.

However, HF 2257 immediately chills these free speech rights of citizens. By mandating reporting on speech to the government, with names and other forms of personal information, the HF 2257 will cause citizens to not make statements out of fear of governmental reprisal – the very thing Section 3 of the State Constitution is designed to protect against.

Violating the privacy of Minnesota residents via Compelled Speech

Businesses across the state of Minnesota know that if their customers do not trust them customers will not use those businesses. Part of that trust includes the protection of the privacy and personal information of those customers. But HF 2257 requires businesses to violate the Privacy promises and expectations and turnover personal and sensitive information to the Minnesota state government.

HF 2257’s mandates not only represent compelled speech - violating the First Amendment of the US Constitution - - but also expose the privacy and security of Minnesota residents. While a Minnesota resident May Trust your local business with its personal information, those residents may not trust the Minnesota State Board of Elections with that information.

An Approach that Actually Works

Rather than enact clearly unconditional laws banning the free speech of Minnesota residents, Minnesota 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.

⁸ Minnesota State Constitution Sec. 3.

Requiring Digital Education in Schools

By redoubling its legislative efforts to improve digital literacy for its citizens. We believe educating citizens about the electoral and voting processes and how to spot deceptive statements regarding elections is better and more effective than heavy handed government bans on free speech.

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 give law enforcement the resources it needs to put child abusers behind bars.

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Again, we respectfully **ask you to oppose HF 2257**. 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.⁹

Sincerely,

Amy Bos
Director of State and Federal Affairs
NetChoice

NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.

⁹ The views of NetChoice expressed here do not necessarily represent the views of NetChoice members.