



March 4, 2026

Committee on Utilities, Technology and Tourism
Wisconsin Senate
P.O. Box 7882
Madison, WI 53707

Re: Senate Bill 758 – Testimony of Ari Cohn in Opposition

Chair Bradley, Vice-Chair Feyen, and Members of the Committee:

My name is Ari Cohn. I have been a First Amendment lawyer for nearly 15 years, and currently serve as Lead Counsel for Tech Policy at the Foundation for Individual Rights and Expression (FIRE), a nonprofit, nonpartisan organization that defends the free speech rights of all Americans.

I testify today in opposition to Senate Bill 758, which violates the First Amendment by requiring all users to identify themselves prior to engaging in protected expression and will—like the many similar laws in other states—be enjoined and ultimately struck down by the courts. **FIRE urges this committee to vote ‘Nay’ on Senate Bill 758.**

SB 758 would require social media platforms to perform age verification on each user to determine whether they are over or under 18 years of age.

For decades, courts have routinely struck down laws such laws, which require adults to identify themselves before consuming lawful content online, finding that they would chill First Amendment activity by deterring people from accessing restricted content, particularly if it is sensitive or controversial.¹

¹ See *American Civil Liberties Union v. Ashcroft*, 534 F.3d 181, 197 (3d Cir. 2008) (age verification “would deter users from visiting implicated Web sites” and therefore “would chill protected speech”); see also *American Civil Liberties Union v. Ashcroft*, 322 F.3d 240, 259 (3d Cir. 2003); *Psinet, Inc. v. Chapman*, 362 F.3d 227, 236–37 (4th Cir. 2004) (“The District Court explained that the stigma associated with the content of these Internet sites may deter adults from visiting them if they cannot do so without the assurance of anonymity.”); *Southeast Booksellers Ass’n v. McMaster*, 371 F. Supp. 2d 773, 782 (D.S.C. 2005) (age verification creates a “First Amendment problem” because “age verification deters lawful users from accessing speech they are entitled

Age verification poses an even *greater* threat when applied to social media. **Users would be forced to sacrifice their anonymity not just to access information, but also to speak** in a forum described by the Supreme Court as “one of the most important places for the exchange of views”² in today’s society.

The right to speak anonymously is baked into this country’s founding, and the First Amendment. It allows users to discuss personal, sensitive, and controversial topics—including political dissent and criticism of powerful figures—safely and candidly, without fear of reprisal or harm. As the Supreme Court put it, “Anonymity is a shield from the tyranny of the majority . . . protect[ing] unpopular individuals from retaliation—and their ideas from suppression—at the hands of an intolerant society.”³

All-too-common incidents⁴ of retaliation by governments—both foreign and domestic and of all political persuasions—against their critics, and their attempts to unmask those speaking anonymously online, demonstrate the urgency and wisdom of First Amendment protection for anonymous speech.

To conclude, I would like to address three misplaced, but common arguments that age verification for social media is constitutionally permissible:

to receive.”); *American Civil Liberties Union v. Johnson*, 4 F. Supp. 2d 1029, 1033 (D.N.M. 1998) (mandatory age verification “violates the First and Fourteenth Amendments of the United States Constitution because it prevents people from communicating and accessing information anonymously.”).

² *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017).

³ *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 357 (1995).

⁴ Just last month, the Department of Homeland Security was revealed to be sending administrative subpoenas to social media companies demanding that they hand over identifying information about accounts critical of ICE. See Sheera Frenkel & Mike Isaac, *Homeland Security Wants Social Media Sites to Expose Anti-ICE Accounts*, NEW YORK TIMES (Feb. 13, 2026). And Germany Chancellor Friedrich Merz announced support for identity verification just as police began to investigate online posts that insulted him. See Sarah McLaughlin, *German chancellor echoes the frequent – and illiberal – call to end online anonymity*, FIRE (Feb. 20, 2026), <https://www.fire.org/news/blogs/free-speech-dispatch/german-chancellor-echoes-frequent-and-illiberal-call-end-online>; Ferdinand Knapp, *Top Trump official slams Germany over probe into man who called Merz ‘Pinocchio’*, POLITICO (Feb. 24, 2026), <https://www.politico.eu/article/us-diplomat-attacks-eu-germany-over-investigation-against-man-who-called-friedrich-merz-pinocchio/>.

1. *Free Speech Coalition v. Paxton*.⁵ The Supreme Court’s June ruling did not, as some claim, establish that age verification mandates are broadly constitutional. *Paxton* was a narrow decision—applying *only* to services that host a proportionally large amount of sexually-explicit content (i.e., pornography) that, while constitutionally protected for adults, is *unprotected* for minors. The court reasoned that the split in constitutional protection for such content—a split that exists nowhere else in First Amendment law—justified the burden on adults’ rights given the inherent necessity of determining who may lawfully access it.

Paxton, in fact, reaffirmed the long-established rule that minors have robust First Amendment rights for all *other* types of content. **The Court’s purposefully narrow ruling does not apply to age verification for social media, where the overwhelming majority of content is constitutionally protected for minors and adults alike.**

In August, Justice Kavanaugh signaled *Paxton*’s inapplicability to social media laws. On a procedural decision in a challenge to Mississippi’s social media age verification law, he wrote separately to clarify that on the ultimate merits, the law likely violates the First Amendment.⁶

2. *Age “assurance.”* It is often incorrectly assert that age assurance can be performed without requiring users to provide personally identifying information. As a statutory matter, SB 758 seemingly would not permit this, as it requires age *verification*, not estimation.

More importantly, it is incorrect as a technical matter. The primary alternative method of age assurance is facial age estimation, which still requires personally identifying information to be shared. All users must share their faces (in other words, biometric data) and people who look around 18 years old, including adults, will have to share some other identification. This is because facial age estimation may sufficiently distinguish whether a person is significantly older than 18, but cannot reliably distinguish between a 17 year-old and a 19 year-old (or an even

⁵ 606 U.S. 471 (2025).

⁶ *NetChoice, LLC v. Fitch*, No. 25A97, 606 U.S. ____ (2025) (Kavanaugh, J., concurring).

older adult who simply looks young). All such systems have a buffer zone of between 2-5 years within which a user will be rejected and forced to provide alternative verification information which will reveal their identity and chill their protected speech.

3. *Existing Federal Law (COPPA)*. Some argue that social media age verification is only a small step beyond what federal law already requires under the Children’s Online Privacy Protection Act (COPPA). To the contrary, **COPPA’s narrow application demonstrates that age verification for social media would be *struck down***. COPPA requires verifiable parental consent before collecting personal data from children under the age of 13. But this requirement is triggered when a site is *directed to* children age 12 and under.⁷ In effect, COPPA requires adults to identify themselves only before accessing content aimed at the youngest children—sites with limited interactivity that few, if any, adults would ever use except alongside a very young child. In contrast, sites aimed at mixed-age audiences—ESPN or Disney, for example—do not automatically trigger COPPA’s in order to *avoid* the First Amendment scrutiny that would result from imposing age verification on the broader Internet.

These bedrock constitutional principles have led courts across the country to enjoin similar legislation in at least nine states. Protecting youth is undeniably important, but the First Amendment demands that it not be accomplished at the expense of free speech—and a law that sits enjoined for years during litigation ultimately protects nobody. The best interests of all Wisconsinites are best served by taking the time to craft constitutionally sound legislation from the outset.

⁷ 13. 15 U.S.C. § 6502.

For these reasons, FIRE respectfully urges this committee to vote ‘**Nay**’ on SB 758.

Thank you for the opportunity to testify today, and I would be glad to answer any questions you might have.

Sincerely,

A handwritten signature in blue ink that reads "Ari Cohn". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ari Cohn

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