FIRE
Foundation for Individual Rights and Expression

March 4, 2026

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

Re: Senate Bill 936 — 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 936, which while doubtless well-intentioned, would violate the First Amendment rights of all social media users. **FIRE urges you to vote 'Nay' on Senate Bill 936.**

I. SB 936 violates the rights of adults by necessitating age verification

As I explained in my earlier testimony,[1] **age verification mandates for social media violate the First Amendment.**

SB 936 attempts to avoid the constitutional issue by requiring platforms to perform ongoing estimations of users' ages to a particular level of confidence (80% or 90%, depending on the time frame), based only on the information that it already collects and retains in the course of business.

But SB 936 mandates a default assumption that every user is under 18 *unless* the platform can conclude otherwise, forcing anyone whose platform usage leaves any ambiguity as to their age to go through intrusive age verification.

And SB 936 is silent as to how platforms should even perform the estimation, and as to how the confidence level is assessed—presumably not solely by the

[1] Hearing Before the Wisconsin Senate Committee on Utilities, Technology and Tourism, *Testimony of Ari Cohn in Opposition to SB 758* (2026), *available at* https://www.fire.org/research-learn/testimony-ari-cohn-opposition-wisconsin-senate-bill-758.

platform's own subjective determination, otherwise a violation would be almost impossible to prove—leaving platforms with no ability to discern when a government enforcer's differing opinion on the confidence level might lead to substantial penalties. While a platform may estimate user ages for advertising purposes, there is no legal penalty for getting those estimations wrong.

Where there are, the only reasonable, risk-averse course of action will be to subject all users to rigorous age verification.

Indeed, enjoining laws in other state, courts have noted that such vagueness "incentivizes over-censorship."[2] For example, in December a federal court blocked a Texas law that requires app developers and stores to label apps with age ratings, finding that it "fail[ed] to provide meaningful guidance to developers and stores about what metrics should be used to determine the age rating of an app."[3]

SB 936's age estimation provisions will meet the same constitutional fate.

II. SB 936 violates the rights of minors

SB 936's parental consent requirements also violate the First Amendment. Minors possess significant First Amendment rights, "and only in relatively narrow and well-defined circumstances" can the government intrude on them.[4]

Those narrow and well-defined circumstances almost exclusively concern sexually explicit content and speech occurring within the K-12 school environment (even within which students retain substantial expressive rights[5])—neither of which are at issue here.

The Supreme Court has expressly disapproved of exactly these kinds of laws. In *Brown v. Entertainment Merchants Association,* the Court rejected California's argument that its ban on the sale of violent video games to minors simply enforced parental authority, finding that it imposed *government* authority on speech as a default. The Court concluded that conditioning minors'

[2] *Computer & Communications Industry Association v. Paxton*, No. 1:25-cv-1660-RP, 2025 WL 3754045 at *8 (W.D. Tex. Dec. 23, 2025).

[3] *Id*.

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

[5] *See Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 596 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.").

exercise of their First Amendment rights on the prior consent of a parent "*must* be unconstitutional." And that is exactly what SB 936 does.

That the parental consent requirements are modeled on the Children's Online Privacy Protection Act (COPPA) does not save the bill from the First Amendment. As explained in my testimony earlier today, COPPA applies only to the very youngest children—who may need extra protection—and has avoided First Amendment scrutiny by not burdening the rights of adults *or* teens. The Court's decision in *Brown* makes clear that requiring parental consent for any social media user under 18 is unconstitutional.

Furthermore, these provisions actively *harm* vulnerable youth who may need social media the most. In our challenge to a Utah law with a similar parental consent requirement, which the court found likely unconstitutional and enjoined, we represented two individuals who help those trapped in abusive polygamous sects—many of them minors—escape to safety.[6] And as the founder of a homeschooling reform nonprofit told me, some children are home-schooled not for any ideological reasons, but because their parents did not want them to go to school where someone would notice obvious signs of severe abuse. Those children, with no frame of reference, often do not even *know* that what is being done to them is abusive and not normal, and might never have known, had they not been able to access social media—where others could inform them and guide them to safety.

Parental consent laws like SB 936 will in fact condition minors' access to life-saving information upon the consent of the very people putting their lives in danger in the first place.

III. SB 936's "addictive features" prohibition is unconstitutional and preempted by federal law

SB 936 prohibits social media platforms from presenting "addictive features," such as personalized feeds, metrics about posts such as likes or reactions, push notifications, and badges or awards based on account usage metrics.

[6] First Am. Compl. ¶ 8–9, *Zoulek v. Hass*, No. 2:24-cv-00031-DAK-DAO, ECF No. 36 (D. Utah May 31, 2024).

But the First Amendment cannot be evaded by attempting to disguise speech regulations as product design regulations—just as the Supreme Court did not allow Minnesota to disguise a press regulation as a mere tax on ink and paper.[7]

These restrictions target *messages* (e.g., "based on what we know about you, we think you would enjoy this content," or "[X] number of people signaled that they liked this content"). Content-based laws like these are presumptively unconstitutional and will ultimately be struck down by the courts.

Moreover, "features" such as personalized feeds, notifications pertaining to posts from other users, and infinitely-scrolling pages, are decisions about how to arrange and display content provided by other users. Such decisions are immunized from liability—including under state law—by Section 230, as courts have repeatedly ruled. Notably, in federal multidistrict litigation that includes more than 2,000 individual cases, the presiding judge—who has not been reluctant to deny platforms' Section 230 defenses—ruled that **either the First Amendment or Section 230 protects the use of these features.**[8] The overwhelming weight of judicial precedents makes clear that such restrictions will not survive scrutiny.

Courts across the country have enjoined similar legislation in at least nine states on these grounds. Protecting youth is undeniably important, but the First Amendment demands that it not be accomplished at the expense of free speech. **FIRE respectfully urges this committee to vote 'Nay' on SB 936.**

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

Sincerely,

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[7] *Minneapolis Star Tribune Company v. Commissioner*, 460 U.S. 575 (1983).

[8] *In re Social Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809 (N.D. Cal. Nov. 14, 2023).

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