FIRE
Foundation for Individual Rights and Expression

April 22, 2026

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: FIRE's opposition to S. 3062

Dear Chairman Grassley, Ranking Member Durbin, and Members of the Committee:

My name is John Coleman, and I serve as Legislative Counsel on Artificial Intelligence and Free Expression for the Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends the free speech rights of all Americans. FIRE opposes S. 3062 because it burdens protected speech by imposing broad restrictions on how people access and use AI tools.

S. 3062 proposes to regulate AI chatbots, particularly "AI companion" systems, through access restrictions, design mandates, disclosure requirements, and liability provisions. These include age verification rules, limits on minors' access, disclosure mandates, content restrictions, and criminal and civil penalties of up to $100,000 per violation.

In light of the bill's breadth, this letter begins by explaining the expressive nature of AI tools and then addresses the bill's most significant constitutional concerns: direct interference with the expressive choices involved in building and using AI tools, restrictions on users' access to lawful speech, and compelled disclaimers.

I. AI is an expressive tool under the First Amendment.

The First Amendment protects Americans' right to communicate and exchange ideas, which is foundational to a free society. It puts strict limits on the government's authority to regulate speech, including the expressive tools used for speech. Although the Constitution predates modern technologies like radio, television, and the internet, its principles have proven durable and adaptable, applying equally to newspapers and social media platforms.

AI fits squarely within this tradition. It is a tool people use to communicate, seek information, and engage in creative expression. While developers design the system's structure — shaping

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how outputs are generated, limited, or prioritized — they do not typically determine the specific content of any given response, which emerges from the model's interaction with user prompts.

For users, the First Amendment protects the ability to ask questions, receive information, and use tools to create speech, whether that tool is a search engine, a word processor, or an AI system. That includes the right to prompt AI and access the outputs it generates. Importantly, these protections apply to everyone, including minors, who also have First Amendment rights to access information and engage in expression.[1]

II. S. 3062 restricts AI design and user speech.

The bill makes it unlawful to design, deploy, or make available chatbots that, in the government's view, "encourages" or "promotes" certain categories of constitutionally protected speech. Those restrictions violate the First Amendment by regulating the protected editorial decisions of developers and by infringing on users' rights to create and receive lawful expression.

Outside of very narrow categorical exceptions — like obscenity, incitement, and defamation — the First Amendment precludes the government from restricting speech based on its content.[2] This reflects a basic First Amendment principle: People must be free to engage with ideas, including ones that are controversial or uncomfortable. Without this protection, the government could dictate what people say or hear.

That time-honored First Amendment safeguard is threatened here. S. 3062 restricts content that, for example, "encourages" or "promotes" imminent physical violence. But the First Amendment draws a clear line between unlawful incitement — which is narrowly defined — and speech that merely depicts, discusses, or even praises violence.[3] If the government were given the power to restrict content that it deems to be "encouraging" or "promoting" violence, that authority could easily sweep in calls for armed self-defense, documentaries and reporting on war or police use of force, protest movements that use forceful language, or religious and historical texts invoking violence — all of which are protected by the First Amendment.

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[1] *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 794-95 (2011).

[2] *See Chiles v. Salazar*, No. 24-539, slip op. at 8-11 (U.S. Mar. 31, 2026); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992). The First Amendment generally prevents government from proscribing speech, *see*, *e.g.*, *Cantwell v. Connecticut*, 310 U.S. 296, 309-311 (1940), or even expressive conduct, *see*, *e.g.*, *Texas v. Johnson*, 491 U.S. 397, 406 (1989), based on its content, rendering such regulations presumptively invalid. *Reed v. Town of Gilbert,* 576 U.S. 155, 163 (2015).

[3] *See Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) ("the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.").

Compounding the problem, developers cannot anticipate what users will say to a chatbot or perfectly predict how a chatbot will respond. Ensuring an AI system does not produce prohibited content will often require restricting related or borderline material, leading developers to suppress far more speech than the bill targets and sweeping in protected expression. As developers narrow outputs to avoid liability, AI tools will offer less information and fewer meaningful ways for users to explore and test ideas, particularly for those who rely on them to research, compare perspectives, and put information in context.

III. S. 3062 restricts access to, and anonymous use of, AI.

S. 3062 restricts access to AI tools by requiring age verification and barring users under 18 years of age from certain AI companion chatbots, effectively conditioning access on disclosure of user identity.

Users must create an account to access a chatbot. Existing accounts are frozen until the user completes an age-verification process, after which the system verifies the user's age and classifies them as a minor or an adult. New users must undergo the same verification at account creation, and covered entities must periodically re-verify user accounts.

By requiring users to verify their identity in order to access AI systems, the bill forces individuals to forego anonymity in order to receive and generate speech. Yet the First Amendment protects the right to speak and receive information anonymously.[4] This long-settled right dates back to the Founding era and helps ensure Americans can exercise their rights when the government or private actors are seeking to retaliate against particular political or social viewpoints.[5] Conditioning access to expressive tools on revealing one's identity burdens that right.

Beyond infringing on the right to anonymous speech, S. 3062's age verification requirements violate the First Amendment by restricting access to an expressive medium. It bans minors outright, and blocks adults until they comply with a government-imposed requirement (the age verification process). The Supreme Court has long recognized that limiting access to entire channels or means of communication sweeps in constitutionally protected speech.[6] In this respect, the bill is particularly concerning in its complete ban on users under the age of 18, who

[4] *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 341-42 (1995); *Watchtower Bible & Tract Society v. Village of Stratton*, 536 U.S. 150, 166-67 (2002).

[5] *McIntyre*, 514 U.S. at 357 ("Anonymity is a shield from the tyranny of the majority . . . [and] thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society.").

[6] *Schneider v. State*, 308 U.S. 147, 163 (1939) (hand-to-hand distribution of leaflets); *City of Ladue v. Gilleo*, 512 U.S. 43, 54-55 (1994) (residential signs on private property); *Packingham v. North Carolina*, 582 U.S. 98, 104-07 (2017) (social media platforms as a principal channel of communication).

enjoy First Amendment rights free from any "free-floating power to restrict the ideas to which [they] may be exposed."[7]

Consistent with these principles, courts have blocked similar regulations in the social media context for burdening anonymous speech and access to lawful information.[8] As the Supreme Court emphasized in *Moody v. NetChoice*, laws regulating the expressive and editorial choices of online platforms trigger First Amendment scrutiny.[9]

The same principles apply here. The bill's broad definitions of "artificial intelligence chatbot" and "AI companion" encompass AI tools used to generate and access speech, and restricting access to them limits how people communicate and engage with information. Faced with mandatory identity disclosure, many users will be afraid to use these tools, particularly for sensitive or personal inquiries. These burdens fall especially hard on vulnerable populations, including minors and those who rely on anonymity to safely engage in expressive activities, like whistleblowers or political dissidents.

IV. S. 3062's disclaimer requirements compel speech.

The bill requires chatbots to announce at the start of a conversation that the user is interacting with an AI system, and to continue or repeat that disclaimer during ongoing interactions. This requirement violates the First Amendment because it forces private speakers to deliver a government-prescribed message in every interaction.

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[7] *Brown*, 564 U.S. at 794 (*quoting Erznoznik v. Jacksonville*, 422 U.S. 205, 212-13 (1975) (striking down a ban on selling video games with violent content to minors). The primary exception would be speech in fully unprotected categories and which is obscene-for-minors. *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 482 & n.7 (2025). As applied in S. 3062, the bill's incorporation of "sexually explicit conduct" sweeps well beyond material that would be considered obscene for minors. For example, the definition includes "lascivious exhibition of the genitals or pubic area," which courts have interpreted to encompass even clothed depictions. *United States v. Johnson*, 639 F.3d 433, 439-41 (8th Cir. 2011). Outside of the minor-specific context of the cross-referenced statute, incorporation of "sexually explicit conduct" into S. 3062 means it can reach images far removed from any traditional understanding of obscene-as-to-minors content.

[8] *See NetChoice, LLC v. Griffin*, No. 5:23-CV-5105, 2025 WL 978607 (W.D. Ark. Mar. 31, 2025) (striking down social media age-verification and parental-consent requirements); *NetChoice, LLC v. Griffin*, No. 5:25-CV-5140 (W.D. Ark. Apr. 20, 2026) (granting a preliminary injunction against revised social media law imposing parental-control and design requirements); *NetChoice, LLC v. Murrill*, Civ. A. No. 25-231-JWD-RLB, 2025 WL 3634112 (M.D. La. 2025) (invalidating law's age-verification and parental-consent provisions); *NetChoice, LLC v. Carr*, 789 F. Supp. 3d 1200 (N.D. Ga. 2025) (enjoining age-verification and parental-consent requirements for minors); *NetChoice v. Fitch*, 787 F. Supp. 3d 262 (S.D. Miss. 2025) (addressing age-verification and parental-consent mandates for social media access); *NetChoice, LLC v. Yost*, 778 F. Supp. 3d 923 (S.D. Ohio 2025) (blocking law requiring parental consent for minors' social media use); *NetChoice, LLC v. Reyes*, 748 F. Supp. 3d 1105 (D. Utah 2024) (enjoining social media regulation imposing age-verification, parental-consent, and design restrictions).

[9] *Moody v. NetChoice, LLC*, 603 U.S. 707, 718 (2024).

As a general matter, the First Amendment prohibits the government from compelling speech.[10] One narrow exception is in the context of commercial advertising. In *Zauderer v. Office of Disciplinary Counsel*, the Court held that the government may require advertising to include "purely factual and uncontroversial information about the terms under which [the] services will be available," if the disclosure is "reasonably related to the State's interest in preventing deception of consumers."[11] But that rationale does not apply here.[12] S. 3062's disclosure requirement is not limited to advertising, nor is it intended to prevent consumer deception in the context of proposing a commercial transaction,[13] for the use or licensing of a chatbot, or otherwise. Instead, it is intended to alter the outputs of the AI itself, overriding both user and developer preferences to impose the government's judgment about what these systems should say.

As the Court reaffirmed in *National Institute of Family and Life Advocates v. Becerra*, the standard in the *Zauderer* decision does not govern simply because a disclosure is informational.[14] Where a mandate is not aimed at preventing deception but at shaping speech or advancing other policy goals, it falls outside *Zauderer*'s scope. S. 3062's disclosure regime will ultimately shape speech because it compels speech across a wide range of contexts without any showing that users are actually being misled. This means this requirement will face a steep uphill battle in court.

FIRE does not oppose voluntary disclosures developed by private actors. But mandates like those in S. 3062 risk hardening early assumptions about how AI systems function and how users interact with them into binding legal standards, limiting their development as tools for expression.

Even well-intentioned disclosure requirements can shape how these systems are designed and used, discouraging experimentation and narrowing how people communicate and access information. For example, requiring chatbots to interrupt or repeatedly qualify their responses with mandated statements may lead developers to shorten answers, avoid follow-up questions, or disable more conversational features to reduce compliance risk, making the systems less useful. Users engage with companion chatbots knowingly and deliberately, aware they are not speaking to a human, to ask questions, find information, or refine their own content. In that context,

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[10] *See Wooley v. Maynard*, 430 U.S. 705, 714 (1977) ("The right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind.'").

[11] *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985).

[12] *Chiles*, slip op. at 11.

[13] *See U.S. v. Wenger*, 427 F.3d 840, 846 (10th Cir. 2005) (*quoting Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976)) ("Commercial speech is that which 'does no more than propose a commercial transaction.'").

[14] *National Institute of Family and Life Advocates v. Becerra*, 585 U.S. 755, 777 (2018); accord *Chiles*, slip op. at 11.

repeated disclosures are unlikely to meaningfully improve user understanding and may instead degrade the quality of the interaction.

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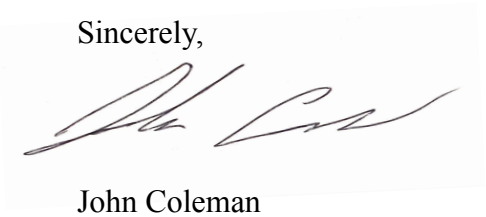
Governments have an important role to play in protecting children from harm, but S. 3062 violates the First Amendment rights of AI developers and users, imposes censorial restrictions on chatbot outputs, and fails to actually protect minors. Less restrictive approaches — such as digital literacy education that gives minors a clear understanding of what the technology can and cannot do, including when human judgment, context, and responsibility are needed — will advance child safety without imposing sweeping content-based constraints on speech and innovation. And the First Amendment *requires* use of such less restrictive means in those circumstances.

For these reasons, FIRE urges this Committee to reject S. 3062 and instead pursue targeted solutions that address real harms without restricting protected speech.

Sincerely,



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