



# Van H. Wanggaard

Wisconsin State Senator

## TESTIMONY ON SENATE BILL 634

Thank you Mr. Chairman and committee members for today's committee hearing on Senate Bill 623, relating to the distribution of certain material to minors. Broadly speaking, the bill requires internet porn sites to have an age verification method to ensure that the person accessing the site is 18 years or older.

This bill is based off a successful law in Louisiana and eight other states. Ten other states have legislation pending. In each of those states, this legislation has passed with overwhelming bipartisan support, with literally only a handful of "no" votes. The law has been signed by both Republican and Democratic governors. This proposed law has been challenged legally in virtually every state in which it has been passed. All but one of those cases has been dismissed.

Last month, Pornhub.com was the fourth-most visited Internet site in the world. Four of the top 20 most visited internet sites are pornography websites. Unfortunately, these websites, photos, and videos are easily accessed by children. A recent survey found that the average age a child is first exposed to online pornography is 11 or 12 years old – the age of a sixth grader. Seventy-one percent of teenagers under 18 have claimed to stumble upon internet pornography without seeking it out.

Pornography acts like a drug, and like any drug, it's particularly harmful to children. Being on this committee, you have probably heard many times about brains of children that are still developing. It triggers the same part of the brain that an addictive drug use does. It can literally become an addiction. The younger exposure begins, the less likely a child will be able to handle the exposure to pornography properly. Pornography gives false representations of what a person should look like, what an ideal body is, what normal sex is, etc. People with early exposure get a warped view of what sex is like, and are more willing to accept and/or seek risky behavior. Exposure also raises the risk of depression, anxiety and low self-esteem. If you CAREFULLY look for research online, you will see tons of research showing the harm to children.

As Supreme Court Justice Potter Stewart said when it comes to pornography, "I don't know how to define it, but I know it when I see it." The legal term of art used in the bill is "material harmful to children," and it defines it about how you would expect it to be defined. It's on page 2, lines 10-23 of the bill.

**Serving Racine and Kenosha Counties - Senate District 21**

This bill also contains reasonable protections for everyone involved. We exempt material with serious literary, artistic and/or scientific value and legitimate news media. As far as age verification methods, the bill is flexible. We don't want to hamstring companies, force an age verification system on a business, or force them out of business, but we want to make sure kids aren't seeing this harmful material. The bill also protects privacy by prohibiting Internet companies from retaining age verification data, and protects Internet Service Providers, targeting only the porn-hosting websites themselves.



**Wisconsin Family Action**

PO Box 7486 • Madison WI 53707-7486

608-268-5074 (Madison) • 866-849-2536 (toll-free) • 608-256-3370 (fax)

info@wifamilyaction.org • www.wifamilyaction.org

---

**TESTIMONY IN SUPPORT OF SENATE BILL 683  
SENATE COMMITTEE ON MENTAL HEALTH,  
SUBSTANCE ABUSE PREVENTION, CHILDREN AND FAMILIES  
THURSDAY, FEBRUARY 1, 2024  
JACK HOOGENDYK, LEGISLATIVE & POLICY DIRECTOR**

Thank you, Chairman James and committee members, for the opportunity to testify on Senate Bill 683 I am Jack Hoogendyk, Legislative and Policy Director for Wisconsin Family Action and we support SB 683.

Mr. Chairman, I don't think it is hyperbole to say that we are in the midst of a crisis in this country regarding minor children and pornography. Let me cite just a few statistics:

A report from Common Sense Media revealed:<sup>1</sup>

- 75% of teenagers have viewed pornography by age 17
- Average age of first exposure to pornography is age 12
- 41% of teenagers saying they had seen images of nudity or sexual acts online during the school day (bypassing existing Wi-Fi filtering)
- Survey of 1,358 Americans age 13 to 17 found that more than half said they viewed *violent* porn (rape, choking, someone in pain)
- 5% of teen respondents said they first saw online pornography at age 10 or younger.

Research on the impact of pornography on children has revealed:

- 41% of young people (aged between 11 and 17) who knew about pornography agreed that watching pornography made people less respectful of the opposite sex. Only 13% disagreed.<sup>2</sup>
- The exposure of children to internet pornography is having impact on the development of harmful sexual behaviors. The average age of first perpetration of sexual violence is 15 -16 and is associated with exposure to pornography.<sup>3</sup>
- A 2016 meta-analysis of pornography research reveals adolescent pornography consumption is significantly associated with stronger gender-stereotypical sexual beliefs, earlier sexual debut, increased casual sex behavior, and increased sexual aggression both as perpetrators and victims.<sup>4</sup>
- Teens are at a great risk of developing a pornography addiction as their brains are still developing.<sup>5</sup>

Attempts by Congress to regulate or prevent access to pornography by minors have proven unsuccessful:

- In the 1996 Communications Decency Act<sup>6</sup>, Congress prohibited the “knowing transmission of obscene or indecent messages to any recipient under 18 years of age,” or the “knowing sending or displaying of patently offensive messages in a manner that is available to a person under 18 years of age.” However, the

---

<sup>1</sup> [Enough Is Enough: youth and Porn](#)

<sup>2</sup> [Children see pornography as young as seven, new report finds | BBFC](#)

<sup>3</sup> [Predicting the Emergence of Sexual Violence in Adolescence | Prevention Science \(springer.com\)](#)

<sup>4</sup> Peter J, Valkenburg P M. Adolescents and pornography: a review of 20 years of research. J of Sex Research. 2016; 53(4-5), 509-531.

<sup>5</sup> [A New Generation of Sexual Addiction: Ingenta Connect](#)

<sup>6</sup> [Communications Decency Act \(CDA\) | Britannica](#)



Supreme Court struck down this provision, finding its prohibitions so vague that they would limit First Amendment-protected speech. Here is a quote from that 1996 decision:

*the Internet is not as 'invasive' as radio or television... [and]... [c]ommunications over the Internet do not 'invade' an individual's home or appear on one's computer screen unbidden. Users seldom encounter content by accident... [and] odds are slim that a user would come across a sexually explicit sight by accident.*

- In 1998, Congress tried again to protect children from harmful content online with the Child Online Protection Act (COPA).<sup>7</sup> It required age-verification for minors visiting sites with material “harmful to children.” The Supreme Court struck down this statute on the grounds that “filters are more effective than age-verification requirements” and would place a lesser burden on First Amendment rights. However, filters have since not proved particularly effective at protecting kids from harmful and obscene content online.

On a more fundamental level, the federal government’s historical focus on communications regulation is not addressing the challenges that the Internet presents to society today, especially with regard to content that appeals to prurient interests and that lacks any literary, artistic, political, or scientific value for minors.

Mr. Chairman, SB 683, by requiring reasonable age verification methods to verify the age of individuals attempting to access internet websites that is harmful to minors, we will greatly help to resolve the issue of the purveyors of pornography reaching our children. The bill’s provision for civil claims allows those harmed by those who seek to ensnare children into the darkness of pornography to seek some measure of justice, which is certainly warranted.

I might add, Mr. Chairman, that parents will be grateful for this legislation. They need our help. Even the best parental-control software available for purchase does not offer full protection<sup>8</sup> and given the lack of current requirements for age verification, a child can easily falsify his age to access online material that is harmful.

Mr. Chairman, this is common-sense legislation and it is much needed in this cyber-technology driven society. We urge passage of Senate Bill 683.

---

<sup>7</sup> [Child Online Protection Act - Wikipedia](#)

<sup>8</sup> [Full article: Do parental control tools fulfil family expectations for child protection? A rapid evidence review of the contexts and outcomes of use \(tandfonline.com\)](#)



207 East Buffalo Street, Ste 325  
Milwaukee, WI 53202  
(414) 272-4032  
aclu-wi.org

February 1, 2024

Chair James, Vice-Chair Cabral-Guevara, and Honorable Members of the Senate Committee on Mental Health, Substance Abuse Prevention, Children and Families:

The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide written testimony in opposition to Senate Bill 683.

Put simply, SB-683 raises significant concerns around privacy, surveillance, and the First Amendment. While the ACLU of Wisconsin is sympathetic to the overarching goal of this legislation, we do not believe an appropriate trade-off is compromising the civil liberties of *all* Wisconsinites.

SB-683 proposes to “card” all people who access websites with content deemed “material harmful to minors.” Under the bill, age verification could be conducted by checking a website-user’s government-issued identification card or “by using any commercially reasonable method that uses public or private transactional data gathered about the individual.”

The language in SB-683 bears a striking resemblance to a law passed in Texas<sup>1</sup> that has been challenged in federal court on First Amendment grounds.<sup>2</sup> A similar age-verification law aimed at social-media platforms passed in Arkansas was enjoined following a lawsuit challenging the law’s constitutionality.<sup>3</sup> In enjoining each of these laws, federal courts in Texas and Arkansas found that the laws unconstitutionally discriminated against protected speech and impermissibly placed speech behind age verification requirements for both minors and adults.<sup>4</sup>

---

<sup>1</sup> Texas H.B. 1181, <https://capitol.texas.gov/tlodocs/88R/billtext/html/HB01181H.htm>.

<sup>2</sup> *Free Speech Coalition, Inc. v. Colmenero*, No. 23-CV-917 (W.D. Tex. Aug. 31, 2023), [available here](#).

<sup>3</sup> *NetChoice, LLC v. Griffin*, 23-vs-5105 (W.D. Ark. Aug. 31, 2023), [available here](#). The ACLU, ACLU of Arkansas, and the Electronic Frontier Foundation filed an amicus brief in support of the challenge to this Arkansas law, [available here](#).

<sup>4</sup> The two decisions follow long-established protections for speech online. Social media’s primary purpose is to allow users to speak, and “to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights.” *Packingham v. North Carolina*, 582 U.S. 98, 108 (2017). The Supreme Court has been adamant that children “are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them.” *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786, 794-95 (2011); accord *Tinker v. Des Moines Ind. Comm. School District*, 393 U.S. 503 (1969). Thus, broad bars to accessing speech online based on age are likely unconstitutional.

The two decisions further recognize that the laws' preferred regulation of speech online—age verification—places impermissible barriers between adult and minor users and the right to speech by undermining their privacy. The Arkansas court recognized that age verification requires adults and minors to surrender their anonymity.<sup>5</sup> The Texas court expressly concluded that the evidence showed that age verification technology remains intrusive of privacy, despite purported advances in the technology.<sup>6</sup> Even requirements in the law that data not be retained or used for other purposes did not alleviate the chilling effect from loss of anonymity.<sup>7</sup>

Common age verification methods include uploading a driver's license or state ID, facial recognition technology, or private transactional data such as a credit card. These requirements could “serve as a complete block to adults who wish to access [online] material but do not” have the necessary form of identification.<sup>8</sup> Under SB-683, that could include Wisconsinites who do not have a driver's license or other government-issued form of identification or a credit card, including undocumented immigrants or transgender and gender-nonconforming people who may lack identification that matches their true identity.

For example, the issue of storage and access could be illustrated by the difference between showing an ID at a bar and uploading an ID to a website online. At a bar, the bouncer takes a quick look at the ID to verify the age without storing or holding this sensitive information. Uploading an ID to a website carries far greater privacy risks, and the fear of the consequences of data misuse from uploading an ID to a website without knowledge is enough to scare many users away from accessing this content.

---

<sup>5</sup> “Requiring adult users to produce state-approved documentation to prove their age and/or submit to biometric age-verification testing imposes significant burdens on adult access to constitutionally protected speech and ‘discourage[s] users from accessing [the regulated] sites.’ *Reno v. American Civil Liberties Union*, 521 U.S. 844, 856 (1997). Age-verification schemes like those contemplated by Act 689 ‘are not only an additional hassle,’ but ‘they also require that website visitors forgo the anonymity otherwise available on the internet.’ *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 99 (2d Cir. 2003); see also *ACLU v. Mukasey*, 534 F.3d 181, 197 (3d Cir. 2008) (finding age-verification requirements force users to ‘relinquish their anonymity to access protected speech’).”

<sup>6</sup> “First, the restriction is constitutionally problematic because it deters adults’ access to legal sexually explicit material, far beyond the interest of protecting minors...People may fear to transmit their personal information, and may also fear that their personal, identifying information will be collected and stored in the records of various Web sites or providers of adult identification numbers... [the] Supreme Court has disapproved of content-based restrictions that require recipients to identify themselves affirmatively before being granted access to disfavored speech.” (internal question marks omitted)

<sup>7</sup> The Texas court said, “Defendant contests this, arguing that the chilling effect will be limited by age verification’s ease and deletion of information. This argument, however, assumes that consumers will (1) know that their data is required to be deleted and (2) trust that companies will actually delete it. Both premises are dubious, and so the speech will be chilled whether or not the deletion occurs. In short, it is the deterrence that creates the injury, not the actual retention.”

<sup>8</sup> *PSINet, Inc. v. Champan*, 362 F.3d 227, 237 (4th Cir. 2004); see also *Am. Booksellers Found.*, 342 F.3d at 99 (invalidating age verification requirement that would make “adults who do not have [the necessary form of identification] . . . unable to access those sites”).



Determining who is a minor requires collecting sensitive information from all users—information that can then be stolen and exploited even years later.<sup>9</sup> As the court noted in *ACLU v. Gonzales*, age verification deters “many users who are not willing to access information non-anonymously...from accessing the desired information.”<sup>10</sup>

Ultimately, by forcing adults to identify themselves in this manner to access lawful, fully protected content online that may fall under the bill’s definition of “material harmful to minors,” SB-683 imposes an unconstitutional burden on adult access to protected speech. The bill’s age verification requirement will likewise burden users who do not have government identification, who wish to exercise their First Amendment right to anonymity or who are otherwise concerned about privacy and security, or whose age or identity “commercially reasonable method[s]” will fail to accurately gauge.

Courts have consistently invalidated laws that prohibit granting minors access to online content without age verification, in large part because of the significant burden verification imposes on all users and the availability of less-restrictive alternatives such as policies enabling or encouraging users (or their parents) to control their own access to information, whether through user-installed devices and filters or affirmative requests to third party companies. As currently written, SB-683 is extremely likely to trigger litigation at significant cost to Wisconsin taxpayers.

We can make the internet safer without sacrificing the privacy and constitutional rights of all Wisconsinites.

---

<sup>9</sup> Matt Perault, J. Scott Babwah Brennan, “To Protect Kids Online, Policymakers Must First Determine Who is a Kid,” Tech Policy Press (July 5, 2023), <https://www.techpolicy.press/to-protect-kids-online-policymakers-must-first-determine-who-is-a-kid/>.

<sup>10</sup> *ACLU v. Gonzales*, 478 F. Supp. 2d 775 (E.D. Pa. 2007).