

Maryland HB 333

OPPOSITION TESTIMONY

February 2, 2023

Maryland Senate Ways and Means

NetChoice respectfully asks that you **oppose** HB 333, legislation which would actually require websites to collect more information on Maryland 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 Maryland State Constitution.

We understand that speech that undermines the electoral process can be dangerous to trust in institutions. However, such a concern does not allow the government to ignore free speech protections enshrined in the US Constitution and thus HB 333 should not move forward.

NetChoice is a trade association of leading internet businesses that promotes the value, convenience, and choice that internet business models provide to American consumers. Our mission is to make the internet safe for free enterprise and free expression.

HB 333's core provisions are unconstitutional under the First Amendment and under the Maryland 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

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).

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.

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 HB 333 mandates disclosure to the government, the names, and other sensitive information about a post, it is clear that HB 333 violates the US Constitutional rights of anonymous speech in elections.

The courts have recognized the First Amendment rights of individuals, businesses, politicians, and nonprofits to engage in advertisements. However, HB 333 would forbid those rights by default on selected websites.

Violates the Maryland State Constitution

“That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege.”⁸ This right extends the right to speak without fear of repression from the state.

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).

⁸ Maryland State Constitution Art. 40.

However, HB 333 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 HB 333 will cause citizens to not make statements out of fear of governmental reprisal – the very thing Art 40 of the State Constitution is designed to protect against.

Violating the privacy of Maryland residents via Compelled Speech

Businesses across the state of Maryland 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 HB 333 requires businesses to violate the Privacy promises and expectations and turnover personal and sensitive information to the Maryland state government.

HB 333's mandates not only represent compelled speech - violating the First Amendment of the US Constitution - - but also expose the privacy and security of Maryland residents. While a Maryland resident May Trust your local business with its personal information, those residents may not trust the Maryland State Board of Elections with that information.

Rather than enact clearly unconditional laws banning the free speech of Maryland residents, Maryland would be better served by redoubling its legislative efforts to improve election 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.

Again, we respectfully **ask you to oppose HB 333**. 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,

Carl Szabo
Vice President & General Counsel, NetChoice

NetChoice is a trade association that works to protect free expression and promote free enterprise online.

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