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MEMORANDUM

April 6, 2026

SUBJECT: Constitutional issues
(CSHB 47(JUD) am; Work Order No. 34-LS0334\G.A)

TO: Senator Kelly Merrick
Chair of the Senate Community and Regional Affairs Committee
Attn: Sorcha Hazelton

FROM: Claire Radford
Legislative Counsel 

You requested a legal analysis of the four House floor amendments that were adopted and incorporated into CSHB 47(JUD) am, and specifically asked if the inclusion of these amendments in HB 47 raise any constitutional issues. These amendments raise proportionality, free speech, privacy, vagueness, and single subject concerns, as well as other legal questions, which are discussed in this memorandum by amendment.

1. **Amendment #3 (Work Order No. 34-LS0334\G.3).** Amendment #3 criminalizes distribution of a generated sexual depiction. Section 11.61.117(a) includes a "threatened disclosure," which could potentially be captured under AS 11.31.100 (attempt), AS 11.41.520(a)(7) (extortion), or 11.41.530(a)(3) (coercion) depending on the circumstances of the threat. This amendment raises an issue of proportionality in sentencing because threatened distribution is punished the same as actual distribution.

The legislature has broad power to define offenses and determine appropriate punishment. While perfect proportionality is not required, a court will, as a matter of due process and equal protection, evaluate whether offenses and their accompanying sentences are proportional, meaning whether greater punishment is imposed for less blameworthy conduct. Proportionality in sentencing is also a matter of constitutional law under the prohibition against cruel and unusual punishment.¹ If this bill is enacted and sec. 11.61.117(a) challenged as a disproportionate punishment for threatened disclosure,

¹ The U.S. Supreme Court has found that the proportionality principle only forbids sentences which are "grossly disproportionate" to the crime. *Rummel v. Estelle*, 445 U.S. 263 (1980). See also *Sikeo v. State*, 258 P.3d 906 (Alaska App. 2011) ("Only punishments that are 'so disproportionate to the offense committed as to be completely arbitrary and shocking to the sense of justice' are cruel and unusual for purposes of Article I, Section 12 of our Constitution.").

a court may question why threatened disclosure is punished at the same level as disclosure itself.

2. **Amendment #4 (Work Order No. 34-LS0334\G.4).** I did not identify any constitutional concerns with amendment #4.

3. **Amendment #5 (Work Order No. 34-LS0334\G.9).** Amendment #5 relates to the use of social media platforms by minors. This amendment raises free speech concerns under the First Amendment of the U.S. Constitution and single subject issues under the Alaska Constitution.

Age verification and parental consent

The parental consent requirement for social media platforms raises a First Amendment issue by restricting minors' access to social media because "minors 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."² The United States Supreme Court has recognized that social media platforms "for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge."³ Thus, the court has explained that "to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights."⁴

In addition, presumably any mechanism sufficient to actually verify user age will require the disclosure of identifying personal information, which would burden both adult and minor users' speech and could limit or eliminate adult and minor users' ability to speak anonymously on social media, thus raising a potential First Amendment issue.⁵

Multiple federal courts have addressed First Amendment issues raised by laws that restrict minors' access to social media platforms, but have not consistently reached the

² *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786, 794 (2011) (quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 212 - 13 (1975)).

³ *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017).

⁴ *Id.* at 108.

⁵ *See Petersen v. State*, 930 P.2d 414, 430 (Alaska App. 1996) ("[T]he First Amendment protects social advocacy even when the speaker chooses to remain anonymous"); *Dendrite Int'l, Inc. v. Doe No. 3*, 775 A.2d 756, 765 (N.J. Super. App. Div. 2001) ("It is well-established that rights afforded by the First Amendment remain protected even when engaged in anonymously."); *cf. Reno v. Am. Civ. Liberties Union*, 521 U.S. 844, 856 (1997) (recognizing trial court finding that requiring passwords to access sites "would discourage users from accessing [those] sites").

same conclusions. The decisions generally agree that the laws are subject at least to intermediate scrutiny, under which the government must show that a law "advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests."⁶ This amendment probably advances important government interests in protecting the well-being of minors, especially assuming the legislative record supports that the addictive features identified cause harm to minors' physical or psychological well-being.⁷ But the amendment may burden substantially more speech than necessary and thus violate the First Amendment.

The law in this area as it relates to the First Amendment is rapidly evolving. The general trend when it comes to age verification laws is that many age-verification statutes are being struck down by the courts. Many cases are being brought by NetChoice, which is a trade association of online businesses that has challenged at least thirteen state laws—in Georgia, Texas, Ohio, Arkansas, California, Utah, Florida, Mississippi, Virginia, South Carolina, Maryland, Louisiana, and Tennessee.⁸

Two specific NetChoice cases that may be helpful in understanding the broader trends are *NetChoice, LLC v. Fitch* and *NetChoice v. Carr*. In *NetChoice, LLC v. Fitch*, the court reviewed Mississippi's statutory online age verification scheme, which limited minors' access to certain digital service providers' websites, and stated, "[n]o doubt a state possesses legitimate power to protect children from harm, but under the First Amendment Free Speech Clause, that does not include a free-floating power to restrict the ideas to which children may be exposed."⁹ In *NetChoice v. Carr*, a U.S. District Court in Georgia issued a preliminary injunction prohibiting enforcement of the provisions of the "Protecting Georgia's Children on Social Media Act" that required age verification for social media account holders, parental consent for minors to have a social media account, and banning of advertising based on a minor's personal information. The court held, in part, that the

Act's age verification, parental consent, and advertising ban provisions were content-based restrictions subject to strict scrutiny; [the] Act's provisions created a significant burden on the speech of Georgia's minors and adults; [the] Act's provisions imposed significant compliance costs that would threaten social media platforms' ability or willingness to access

⁶ *TikTok Inc. v. Garland*, 604 U.S. 56, 70 (2025).

⁷ *Sable Commc'ns of California, Inc. v. F.C.C.*, 492 U.S. 115, 126 (1989) ("We have recognized that there is a compelling interest in protecting the physical and psychological well-being of minors.").

⁸ NetChoice Litigation Center, accessed April 6, 2026, <https://netchoice.org/litigation/>.

⁹ 787 F.Supp.3d 262, 272 (S.D. Miss. 2025).

audiences and have a chilling effect on speech; [the] Act was both underinclusive and overinclusive and thus not narrowly tailored to advance a significant government interest; [the trade] association [representing social media platforms] established a substantial likelihood of prevailing on the merits of its First Amendment challenge to the Act; [the] association established a substantial likelihood of prevailing on the merits of its void-for-vagueness due process challenge to the Act; [and the] association established a substantial likelihood of prevailing on the merits of its preemption challenge to Act's provision prohibiting advertising based on a minor's personal information[.]¹⁰

One case where age requirements were upheld was in *Free Speech Coalition, Inc v. Paxton*, in which a Texas law requiring age verification for commercial pornographic websites with more than one-third of their content being sexual material was challenged based on the First Amendment. The United States Supreme Court held that "the First Amendment leaves undisturbed States' traditional power to prevent minors from accessing speech that is obscene from a minor's perspective, and that power necessarily includes the power to require proof of age before an individual can access such speech."¹¹

Given the uncertain nature of the law in this area, I am not able to predict with certainty the outcome of a potential future First Amendment challenge to the social media platform provisions in this amendment. The current trend, however, appears to be that a court will grant a preliminary injunction against the enforcement of state statutes addressing these areas before proceeding to make more specific findings as to First Amendment and vagueness challenges. The majority of courts have then struck down age verification laws when more specific findings are issued. If the age verification requirements were limited to apply to websites that contained speech that is obscene from a minor's perspective, the holding in *Paxton* suggests a court may be more likely to uphold the age verification requirement.

Parental access to a minor's account. The amendment allows a "consenting parent" to access a minor's account and monitor, modify, or delete content on the account. Because "consenting parent" is defined as "a parent or another person with legal custody of a minor who has consented to the minor's use of a social media platform," the amendment provides parental authority to access a child's account for a parent who has consented, but a parent of the child who has not consented does not have the same authority. Thus, if only one parent of a child consented to the creation of the child's social media account, that child's other parent would likely not be able to access the account. As a practical matter, the committee may want to consider addressing this discrepancy.

¹⁰ 789 F.Supp.3d 1200 (N.D. Georgia 2025).

¹¹ 606 U.S. 461, 478 (2025)(citing *Ginsberg v. New York*, 390 U.S. 629, 641 (1968)).

Providing a parent complete access to a child's social media account may also raise a constitutional privacy concern. Article I, sec. 22, of the Alaska Constitution provides in part: "The right of the people to privacy is recognized and shall not be infringed." Right to privacy cases in Alaska "can be divided into two categories: those that claim a right of personal autonomy, and those that seek to shield sensitive personal information from public disclosure."¹²

In the personal information context "[f]or the right to privacy to apply, there must be both a legitimate expectation of privacy and a claim of substantial infringement, as distinguished from a minimal one."¹³ "A legitimate expectation of privacy is an expectation that 'society is prepared to recognize as reasonable.'"¹⁴ The Alaska Supreme Court has not directly addressed whether the information on a child's social media account is the type of personal information protected by art. I, sec. 22.

The court has, however, described the personal information privacy interest as "an individual's interest in protecting 'sensitive personal information . . . which if, disclosed . . . , could cause embarrassment[,] anxiety,' humiliation, harassment, or economic and physical reprisals."¹⁵ Because disclosure of a child's personal communications could cause embarrassment, humiliation, and anxiety, and in more severe instances subject the child to harm from a parent, it is possible that a child, in some instances, has a fundamental privacy interest in the child's social media account.

A state mandated disclosure of sensitive personal information protected by art. I, sec. 22, is unconstitutional unless "disclosure [is] nonetheless required to serve a compelling state interest . . . [and] the necessary disclosures occur in a manner which is least intrusive with respect to the right to privacy."¹⁶ If a court finds that a child has a protected privacy interest in the child's social media account, the state would have to show a compelling state interest necessitates the involuntary disclosure, and that no narrower means could be used to accomplish that interest.

Addictive features. The amendment's prohibitions on social media platforms employing addictive features for minors may raise a constitutional free speech challenge. The amendment prohibits a social media platform's use of "a feature, design, or mechanism

¹² *Doe v. State, Dep't of Pub. Safety*, 444 P.3d 116, 126 (Alaska 2019) (internal citations omitted).

¹³ *Id.* at 126 - 27.

¹⁴ *Id.* at 127 (quoting *International Ass'n of Fire Fighters, Local 1264 v. Municipality of Anchorage*, 973 P.2d 1132, 1134 (Alaska 1999)).

¹⁵ *Id.* (alterations in original) (internal citations omitted).

¹⁶ *Id.* at 126 (quoting *Alaska Wildlife All. v. Rue*, 948 P.2d 976, 980 (Alaska 1997)).

that encourages or rewards a minor user's excessive or compulsive use of the platform or that exploits the psychological vulnerabilities of a minor user." This prohibition arguably restricts the platform's ability to speak based on content. "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests."¹⁷

The prohibition on addictive features, designs, and mechanisms may also raise a constitutional vagueness challenge because it is not clear when a use of a social media platform is "excessive or compulsive" or when a feature, design, or mechanism "exploits the psychological vulnerabilities of a minor user." "An impermissibly vague statute violates due process because it does not 'give fair notice of conduct that is forbidden or required.'"¹⁸ The Alaska Supreme Court has explained that "a law may be unconstitutionally vague if the scope of exceptions and the scope of defenses are unclear."¹⁹ When evaluating a vagueness challenge the Alaska Supreme Court will determine "whether there is a history or a strong likelihood of arbitrary enforcement and uneven application . . . [and] whether the regulation provides adequate notice of prohibited conduct."²⁰ Under the amendment, it could be difficult for a social media company to know whether a specific feature, design, or mechanism violates the amendment's prohibition.

Definitions. The amendment defines "social media platform" broadly to include any website "that allows users to create, share, or view user-generated content, including text, images, videos, or audio." This definition seems to include any website that enables user comments, including news, sports, entertainment and other websites that users predominantly visit to obtain, rather than share, information. Defining social media platform so broadly may exacerbate other concerns identified above. Requiring parental consent for such a wide array of websites could close most of the Internet to minors whose parents are unwilling to provide consent.

Although not a constitutional issue, the definition of "minor" does not expressly exclude emancipated minors. Thus, the amendment's requirements, including the need to obtain parental consent, would apply to an emancipated minor who, if the emancipated minor had no contact with a parent or another individual with legal custody, would be unable to access social media. Additionally, the definition of "consenting parent" includes a person who has legal custody of a minor. Legal custody generally refers to "the discretion to

¹⁷ *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

¹⁸ *Robles v. Domino's Pizza, LLC*, 913 F.3d 898, 906 (9th Cir. 2019) (quoting *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012)).

¹⁹ *Halliburton Energy Servs. v. State, Dep't of Labor*, 2 P.3d 41, 50 (Alaska 2000).

²⁰ *Id.*

make major decisions regarding a child's upbringing," and it is distinct from "physical custody" of a child.²¹ The amendment does not define "person who has legal custody." In AS 13.70.190(5), the legislature has chosen to define "individual having legal custody of a minor child" as "an individual who, under the law of this state, has legal custody of a minor child as a matter of law or court decree." Therefore, the committee may want to define "legal custody" for the purposes of this bill.

Single subject. It is possible that this amendment, as well as amendment #6, raises an issue under the single-subject rule.²² This constitutional provision requires that all matters in an act "fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."²³ Historically, the Alaska Supreme Court has interpreted Alaska's single subject rule to permit very broad subject matter in one bill without violating the single subject requirement. For example, courts have held that bills relating to such broad themes as "development of water resources,"²⁴ "taxation,"²⁵ "land,"²⁶ "intoxicating liquor,"²⁷ and "criminal law"²⁸ are acceptable.²⁹ However, in *Croft v. Parnell*, the Alaska Supreme Court held that an initiative that provided public campaign funding to candidates for state office, and proposed a three-cent tax on each barrel of oil produced in the state to offset the costs of the proposal, violated the single subject rule.³⁰

The single subject of the bill prior to the House floor amendments was "crime," specifically generated obscene child sexual abuse material. The addition of amendment #5 includes language that pertains to the use of social media platforms by minors. I am unable to think of a single subject that could capture all the provisions of the bill now that

²¹ *Elton H. v. Naomi R.*, 119 P.3d 969, 975 - 76 (Alaska 2005).

²² Art. II, sec. 13, Constitution of the State of Alaska provides, in relevant part: "Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws."

²³ *State v. First Nat. Bank of Anchorage*, 660 P.2d 406, 415 (Alaska 1982).

²⁴ *Gellert v. State*, 522 P.2d 1120 (Alaska 1974).

²⁵ *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534 (Alaska 1978).

²⁶ *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406 (Alaska 1982).

²⁷ *Van Brunt v. State*, 646 P.2d 872 (Alaska App. 1982).

²⁸ *Galbraith v. State*, 693 P.2d 880 (Alaska App. 1985).

²⁹ *Evans v. State*, 56 P.3d 1046, 1070 (Alaska 2002).

³⁰ 236 P.3d 369, 372-74 (Alaska 2010).

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amendments #5 and 6 have been adopted. As you may be aware, failure to comply with the single subject requirement could jeopardize the entire underlying bill, if challenged.

4. Amendment #6 (Work Order No. 34-LS0334\G.16). Amendment #6 fines an organization \$1,000,000 for each instance where a user of the organization's artificial intelligence system creates generated child sexual abuse material as described under AS 11.61.122(a). This amendment also raises single subject issue, as addressed above.

Additionally, this amendment raises a legal question as to whether the civil penalty amount is sizeable enough to be treated by the courts as a criminal matter. A court will determine whether the amount demonstrates a social and ethical judgment by the community of criminality in this situation.³¹ Imposition of a fine that is heavy enough to indicate criminality would require that the person charged with the infraction or violation be provided with the right to a jury trial and counsel at public expense. The court will give some deference to the legislative identification in the bill of the amount being a civil penalty.³² A court could, however, look at criminal fines that can be assessed under AS 12.55.035, which provides, in part, that a class A misdemeanor could carry a \$500,000 penalty and an organization that commits a felony could pay up to \$2,500,000. In looking at the fines under AS 12.55.035, the court may determine that the fine amount in amendment #6 indicates criminality and not a civil penalty. Given the size of the fine and that it is assessed for each instance under this amendment, I think a court could conclude that the amount of this fine denotes criminality and requires criminal protections for those organizations accused of violating this provision.

Please let me know if you have any additional questions or would like to make changes to this bill.

CER:mis

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³¹ See *Baker v. City of Fairbanks*, 471 P.2d 386, 402 n.29 (Alaska 1970); *Resek v. State*, 706 P.2d 288, 291 (Alaska 1985); and *Beran v. State*, 705 P.2d 1280, 1284 n.4 (Alaska App. 1985).

³² *Resek v. State*, 706 P.2d 288, 291 (Alaska 1985).