ACLU OF RI POSITION: OPPOSE

**TESTIMONY ON 26-H 7954,
RELATING TO COMMERCIAL LAW – GENERAL REGULATORY PROVISIONS –
DIGITAL PLATFORM TRANSPARENCY AND DEMOCRATIC INTEGRITY ACT
March 5, 2026**

While we appreciate the concerns expressed by some about the impact of social media and its use of algorithms to determine the content seen by its users, the ACLU of Rhode Island has significant constitutional concerns about the efforts contained in this bill to address that issue.

The legislation would regulate how certain large social media platforms utilize algorithms and would require platforms to employ policies and measures to detect and disclose synthetic media depicting real individuals, statements, or events on their platform. We are concerned that the required disclosure of algorithmic methods and "the primary factors used to determine ranking, recommendation, amplification, or suppression of content," §6-63-3(a)(1), raise serious First Amendment issues.

Courts have repeatedly recognized that compelled disclosure requirements like this can implicate First Amendment protections. A recent court decision considered similar disclosure requirements in a California law and noted that it was "well-established that the forced disclosure of information, even purely commercial information, triggers First Amendment scrutiny." *NetChoice, LLC v. Bonta,* 113 F.4th 1101 (9th Cir. 2024). In that case, the court of appeals ruled that several provisions in the California law would likely not survive First Amendment scrutiny, noting in particular that the disclosure requirements could "curtail the editorial decisions of social media companies" or "chill the expression of their third-party users." *Id.*

More broadly, courts have recognized that algorithmic usage and decisions can constitute protected activity. Another recent decision found that "the more an algorithm implements human editorial directions, the more likely it is to be expressive for First Amendment purposes. An algorithm that promotes a platform's own message to users is likely to be protected speech." *NetChoice, LLC v. Bonta,* 152 F.4th 1002 (9th Cir. 2025).

Requiring the disclosure of media made by artificial intelligence (AI) also presents First Amendment issues. While the U.S. Supreme Court has held that the government may compel disclosure of "purely factual and uncontroversial" information in the context of *commercial speech*, *Zauderer v. Off. of Disciplinary Counsel of Sup. Ct. of Ohio, 471 U.S. 626, 651 (1985),* most AI-generated media shared on social media platforms is not commercial speech. As such, a disclosure requirement would likely be subject to heightened First Amendment scrutiny.

For these reasons, we are constrained to oppose this well-intentioned legislation. Thank you for considering our views.