



Testimony of Hope Ledford
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Chamber of Progress

Re: S. 289 - An Act relating to age-appropriate design code

April 5, 2024

Dear Chair Marcotte and members of the Committee,

Thank you for the opportunity to submit testimony for the record regarding S. 289. On behalf of the Chamber of Progress, a tech industry coalition promoting technology's progressive future, I urge you to oppose S. 289 which would lead to over-moderation, degrading online services for users of all ages and threatens to violate First Amendment rights, likely leading to a protracted and unwinnable legal battle.

Our organization works to ensure that all Americans benefit from technological leaps. Our corporate partners include companies like Amazon, Meta, Snap and Apple, but our partners do not have a vote on or veto over our positions.

One of Chamber of Progress's top priorities is ensuring children have access to safe and inclusive online spaces. Unfortunately, many regulations and policies modeled after Age-Appropriate Design Code with the intention of protecting children may end up doing more harm than good by exacerbating the isolation of our most vulnerable young people.

We appreciate the removal of a hard age verification requirement in this version, however, we remain concerned that the threat of enforcement may function as a de facto age verification requirement or chill expression online.

Platforms will over-moderate for all users

S. 289 would require that a covered platform "owes a minimum duty of care to the minor consumer" users, including the prohibition of "excessive or compulsive



use” of an online service, product, or feature without providing clear guidance about what that entails.

We agree promoting online safety for young people is important but, in practice, this requirement would make each site the arbiter of appropriate content for children of all age ranges and circumstances. Platforms would face difficult choices about what types of content to consider and would end up over-moderating in fear of litigation, degrading the online experience for all users and restricting constitutionally protected speech.

Platforms have long understood the concerns raised by many stakeholders, from parents to schools to government entities, that children require protection online. While state and federal policymakers have explored legislation to address this issue with mixed results, many platforms are already prioritizing child safety, and are putting in place tools and procedures aimed at child safety on their platforms.

SB 289 guarantees litigation and raises major First Amendment issues

SB 289 stands in direct contradiction to established legal precedent. The First Amendment stringently restricts governmental interference with both the editorial discretion of private entities and the rights of individuals, regardless of age, to access lawful expression. SB 289, through its content-based and speaker-based restrictions, unequivocally infringes upon these fundamental freedoms. Moreover, similar legislative efforts aimed at restricting minors' access to protected speech have been met with significant judicial skepticism. Courts have consistently demanded a compelling justification for such measures, alongside concrete evidence of their necessity and effectiveness in mitigating harm. Recent rulings from courts in Arkansas,¹ California,² and Ohio³ underscore

¹ *NetChoice, LLC v. Griffin*, No. 5:23-cv-05105 (W.D. Ark. filed June 29, 2023). “If the State’s purpose is to restrict access to constitutionally protected speech based on the State’s belief that such speech is harmful to minors, then arguably Act 689 would be subject to strict scrutiny.”

² *NetChoice, LLC v. Bonta*, No. 5:2022cv08861 (N.D. Cal. 2023). “[T]he Act’s restrictions on the functionality of the services limit the availability and use of information by certain speakers and for certain purposes and thus regulate[s] protected speech.”

³ *NetChoice, LLC v. Yost*, 2024 WL104336 (S.D. Ohio Jan. 9, 2024). “As the [Supreme] Court explained, ‘[s]uch laws do not enforce parental authority over children’s speech and religion; they impose governmental authority, subject only to a parental veto.’ The Act appears to be exactly that sort of law. And like other content-based regulations, these sorts of laws are subject to strict scrutiny.”



CHAMBER OF PROGRESS

the principle that regulatory measures impacting the core editorial and curatorial functions of social media companies, even when intended to safeguard young users, are subject to rigorous constitutional scrutiny under the First Amendment – and the failure to meet this high bar of constitutional scrutiny renders these attempts legally untenable.

We agree with the need to build in greater protections for young users, but some of this bill's requirements would undermine the protections it tries to create and would end up harming vulnerable users. As such, we request you **oppose S. 289**.

Thank you,

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