

Vermont S. 69, an act relating to age-appropriate design code

OPPOSITION TESTIMONY

Feb. 19, 2025

Vermont Senate Committee on Institutions

NetChoice respectfully asks that you **oppose** Has it:

- Fails to protect a single citizen from harm;
- Requires websites to collect more information from children and adults; and
- Violates the First Amendment of the US Constitution

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.

We share the sponsor's goal to better protect minors from harmful content online. NetChoice members have taken issues of teen safety seriously and in recent years have rolled out numerous new features, settings, parental tools, and protections to better empower parents and assist in monitoring their children's use of social media. We ask that you oppose S69 and instead use this bill as a way to jumpstart a larger conversation about how best to protect minors online and consider alternatives that do not raise constitutional issues.

S69 will not protect a single citizen from harm. That is because an unconstitutional law will protect zero children. Rather than head down this path, NetChoice asks that we work together to create real solutions that will not be thrown out in court.

S. 69's core provisions are unconstitutional under the First Amendment.

S69 draws heavily from California's unconstitutional AADC (and an import from the United Kingdom) which would impose sweeping restrictions on online speech through an unconstitutional regulatory regime masquerading as a data privacy law. Like similar laws recently enjoined nationwide, S69 violates

bedrock First Amendment principles through content-based restrictions that trigger and fail strict scrutiny.

“Nothing shown to me shows that the [state] Legislature cared one whit about the Constitution.” [California’s AADC] was not designed to pass successfully through the filter of the First Amendment, and now [the State] is trying to reverse engineer it.”

Vermont’s AADC is similarly likely to run afoul of the First Amendment due to its strong inducement for online platforms to over-censor content in order to avoid being penalized under the law’s vague concept of what might be harmful to minors. Under threat of massive fines for misjudging what may be considered emotionally distressing to children, many platforms will certainly default to taking down all content on entire subjects, which is likely to remove beneficial, constitutionally protected material along with anything genuinely harmful.

By covering any service "reasonably likely to be accessed by minors," this bill would regulate most of the internet. The Supreme Court has repeatedly rejected such sweeping attempts to restrict online speech. Yet this legislation would force websites to limit speech for all users based on potential minor access. Make no mistake, we are talking about the government banning speech online. That is why the New York Times filed as *amicus curiae* supporting NetChoice in our lawsuit against California’s version of the Age Appropriate Design Code.¹

Age assurance requires mass collection of sensitive personal information like identification document

Additionally, S69 imposes on websites an age-assurance requirement on *most* websites available to Vermont users, including news sites, popular blogs, and certain online retailers. Regulated businesses would be required to determine which of their users are children and estimate the age of their users with a “reasonable” level of certainty.

Age assurance requires children and adults alike to share sensitive personal information like government-issued identification documents or face scans that, should they fall into the wrong hands, can be used for identity theft and other nefarious purposes. As Judge Freeman noted in granting a preliminary injunction in California, the law compromises privacy, writing that it is “actually likely to exacerbate the problem by inducing covered businesses to require consumers, including children, to divulge additional personal information.”²

¹ See <https://splc.org/2023/05/amicus-brief-in-netchoice-v-bonta-n-d-calif-2023/>.

² See *NetChoice vs Bonta, 2023*

<https://netchoice.org/wp-content/uploads/2023/09/NETCHOICE-v-BONTA-PRELIMINARY-INJUNCTION-GRANTED.pdf>

Beyond its First Amendment violations, S69 is unconstitutional under the Dormant Commerce Clause because it regulates behavior and activities that take place outside of Vermont. The law also imposes requirements on websites for the use, tracking, and storage of information about their users who are under the age of 18. These requirements conflict with COPPA, a federal law that governs how websites handle minors' data. Therefore, S69 also violates the Constitution's Supremacy Clause.

On the policy front this legislation requires a data collection on virtually every Vermont resident on a scale never before seen. Age verification for those under 18 mandates age-verification for those over 18. If enacted websites would be required to collect the most sensitive information about Vermont adults trying to use the internet. We're talking passports, drivers licenses, Social Security numbers, and more to prove the person behind the keyboard is who they say they are and are as old as they claim to be. And this is not just large operators but any website that might be accessed by a 17-year old.

An Approach that Actually Works

Rather than enact clearly unconditional laws banning the free speech of Vermont residents, Vermont would be better served enacting laws that help the citizens and are legal. NetChoice is working with lawmakers from across the country to achieve such ends.

Requiring Digital Education in Schools

By redoubling its legislative efforts to improve digital 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. This approach will not only reach children where they are, but will help arm them to become better digital citizens.

Updating Child Abuse Laws for AI

Today, child abusers are able to use artificial intelligence to create images and escape justice under existing Child Sexual Abuse Material (CSAM) laws. This is because existing CSAM laws require real images of the abuse, rather than AI generated ones. NetChoice is working with lawmakers to create laws that fill the gaps in existing CSAM laws to protect children from such abuses.

Empowering law enforcement to arrest child abusers

Today less than 1% of all reports of child abuse are even investigated. That means that 99% of reports of child abuse go unheard. This is because law enforcement doesn't have the resources it needs to investigate and prosecute child abusers. NetChoice supports giving law enforcement the resources it needs to put child abusers behind bars.

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Again, we respectfully ask you to **oppose S69**. 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.³

Sincerely,

Amy Bos
Director of State and Federal Affairs
NetChoice

NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.

³ The views of NetChoice expressed here do not necessarily represent the views of NetChoice members.