

May 3, 2023

The Honorable Trey Martinez Fischer  
Chairman, House Democratic Caucus  
Texas House of Representatives  
1100 Congress Avenue,  
Austin, TX 78701

The Honorable Todd Hunter  
Chair, House Committee on State Affairs  
Texas House of Representatives  
1100 Congress Avenue  
Austin, TX 78701

The Honorable Ana Hernandez  
Vice-Chair, House Committee on State Affairs  
Texas House of Representatives  
1100 Congress Avenue  
Austin, TX 78701

Dear Chairman Martinez Fischer, Chair Hunter, and Vice-Chair Hernandez,

We write to express our opposition to House Bill 2690. This bill would force platforms to proactively censor any speech about abortion access or mutual aid funds in order to avoid liability. It would also require internet service providers to refuse to host sites that provide information about accessing abortions anywhere in the U.S., abortion funds and mutual aid funds, and how to order abortion pills through the mail—which federal law still protects.<sup>1</sup>

As drafted, these prohibitions may lead to services censoring direct messages between patients and caregivers on how to obtain safe care. It may also force services to block or censor telemedicine counseling services in which medical professionals advise pregnant people on a variety of reproductive health services, including but not limited to legal abortions.

Restricting access to factual information about abortion access would pose harm to all women, especially communities of color and to low-income women. It is already especially difficult for underserved racial and ethnic minority people to access and use reproductive health services as needed.<sup>2</sup> Women who already have

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<sup>1</sup> Stein, Perry, "Justice Dept.: Despite bans, abortion pills may be mailed to any state" 1/4/2023  
<https://www.washingtonpost.com/national-security/2023/01/04/abortion-pills-mailed-legal/>

<sup>2</sup>SisterSong, National Latina Institute for Reproductive Health, Center for Reproductive Rights,  
*Reproductive Justice: Racial and Gender Discrimination in U.S. Health Care*, 2014,  
[https://reproductiverights.org/wp-content/uploads/2020/12/CERD\\_Shadow\\_US\\_6.30.14\\_Web.pdf](https://reproductiverights.org/wp-content/uploads/2020/12/CERD_Shadow_US_6.30.14_Web.pdf)

challenges accessing health care may especially depend on the Internet to find and receive accurate information about reproductive health.

Online searches for information about abortion are most common in states with the strictest abortion laws.<sup>3</sup> Unfortunately, those searches are also more likely to turn up dangerous misinformation – leading women to fake clinics, linking abortions to breast cancer and infertility, and promoting the use of unsafe, ineffective herbal remedies. By forcing platforms to censor doctors and other reliable sources posting factual information online, this bill would allow that dangerous information to spread unchecked.

In addition to reducing access to factual abortion-related information, the bill could force platforms and service providers to censor any information about reproductive health. Many organizations that provide resources for abortion access also provide general information about reproductive and sexual health. It would be difficult for platforms and service providers to distinguish between the types of content targeted by this bill and other, allowable information about reproductive health services.

For example, Planned Parenthood's website includes information about accessing abortion clinics as well as STD testing, cancer screenings, and birth control. Under this bill, internet service providers, search engines, and social networks could face liability unless they blocked Planned Parenthood's site. Platforms could face difficult questions about whether they could be sued for posts describing treatment options during a miscarriage.

To avoid these questions, platforms might choose to block all posts related to reproductive health, and service providers might revoke access for any site that provided information to pregnant people. This, in turn, could lead to increased rates of unintended pregnancies and maternal mortality, as well as rates of sexually transmitted diseases, as internet users would be denied access to information about reproductive and sexual health.<sup>4</sup>

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<sup>3</sup> Reader, Ruth, "Searches for abortion medications have soared" 6/19/2022  
<https://www.politico.com/news/2022/06/29/searches-for-abortion-medications-have-soared-00043123>

<sup>4</sup> Sutton, M. Y., Anachebe, N. F., Lee, R., & Skanes, H. (2021). Racial and Ethnic Disparities in Reproductive Health Services and Outcomes, 2020. *Obstetrics and gynecology*, 137(2), 225–233.  
<https://doi.org/10.1097/AOG.0000000000004224>

Finally, by forcing platforms to censor a wide array of information online, this legislation is also in clear violation of the First Amendment. In 1975, the Supreme Court in *Bigelow v. Virginia* explicitly held that a state could not bar citizens of another state “from disseminating information about an activity that is legal in that state.”<sup>5</sup>

Because access to medication abortion is still protected at the federal level, and because women still have the right to travel across state lines to receive care, states cannot limit speech about accessing those legal services. By imposing liability on platforms and service providers who choose to host speech about federally protected reproductive health services and mutual aid funds, HB 2690 infringes on the rights of individuals to communicate freely online – and the rights of online platforms to host that speech.

In conclusion, we urge you to reject this legislation because it will make it harder to find safe, reliable reproductive health care information online; poses serious risks to those who already face challenges in accessing health care; and violates the U.S. Constitution by inviting the state of Texas to censor speech online.

Sincerely,

Chamber of Progress  
Electronic Frontier Foundation  
PEN America

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<sup>5</sup> *Bigelow v. Virginia*, 421 U.S. 809 (1975); <https://supreme.justia.com/cases/federal/us/421/809/#tab-opinion-1951369>